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ABSTRACT

The manual contains the texts of all federal regulations concerning federal student financial aid programs, many of which are authorized by Title IV of the Higher Education Act of 1965, as amended, as of December 31, 1997. An introductory section gives guidance in reading and understanding the regulations; the relationship of law to regulation; differences between proposed rules, final rules, and notices; how regulations are developed, negotiated, and numbered; how they are structured; the significance of effective dates; and distribution of regulations. This is followed by the regulations themselves, by program or legislation, and within those by date of publication of the final regulations. Regulations are grouped by type, and include those for drug-free schools and campuses, family educational rights and privacy, institutional eligibility, recognition of accrediting agencies, recognition of state agencies, scholarships, student assistance general provisions, loan programs, work-study programs, grants, and early intervention programs. Appended materials include a list of final regulations published in 1997 and a summary of changes in final regulations published in 1997. (MSE)

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ED 418 629

COMPILATION OF STUDENT FINANCIAL AID REGULATIONS

THROUGH 12/31/97

HE 031 157

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STUDENT FINANCIAL ASSISTANCE PROGRAMS

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Student Financial
Assistance Programs

March 1998

SUMMARY: Cover letter for the ***Compilation of Student Aid Regulations.***

Dear Colleague:

This *Compilation of Student Aid Regulations* includes changes from all final regulations published in the FEDERAL REGISTER through December 31, 1997. **A helpful list of the new regulations and the sections that were changed can be found in Appendix A and Appendix B of this compilation.**

We are sending one copy of the *Compilation* to each postsecondary school that participates in the Student Financial Assistance Programs. Additional single copies of the *Compilation* may be ordered from the Federal Student Aid Information Center at 1-800-4 FED AID (1-800-433-3243), while supplies last.

This *Compilation* will also be made available in electronic form on our Information for Financial Aid Professionals (IFAP) Web site:

ifap.ed.gov

We encourage you to visit and bookmark this site, which will have a wealth of program information, from Action Letters to Federal Registers, ready to be downloaded in searchable electronic formats.

We hope that you find the *Compilation* a useful reference tool for the proper administration for the Student Financial Assistance Programs.

Sincerely,

William J. Ryan
Director
Training and Program
Information Division

400 Maryland Avenue, S.W. Washington, DC 20202
Our Mission is to Ensure Equal Access to Education and to Promote Educational Excellence Throughout the Nation

Table of Contents
Compilation of Student Financial Aid Regulations
through
December 31, 1997

Part		Page
Introduction: Understanding a Regulation		Introduction-1
86	Drug Free Schools and Campuses August 16, 1990* (September 30, 1990**)	1-1
99	Family Educational Rights and Privacy	2-1
Combines--
Final Regulations April 11, 1988* (May 26, 1988**)
Final Regulations January 7, 1993* (February 25, 1993**)
Final Regulations January 17, 1995* (March 3, 1995**)
Final Regulations November 21, 1996* (December 23, 1996**)
600	Institutional Eligibility Under the Higher Education Act of 1965, as Amended	3-1
Combines--
Final Regulations April 28, 1994* (July 1, 1994**)
Final Regulations April 29, 1994* (July 1, 1994**)
Final Regulations November 29, 1994* (July 1, 1995**)
Final Regulations June 30, 1995* (July 31, 1995**)
Final Regulations June 12, 1996* (July 12, 1996**)
Final Regulations November 29, 1996* (July 1, 1997**)

*** Date of Publication**
**** Effective Date**

Part Page

602 **Secretary's Procedures and Criteria for the Recognition of Accrediting Agencies** 4-1

Combines--

Final Regulations
April 29, 1994* (July 1, 1994**)

Final Regulations--OMB control number added
September 7, 1994* (September 7, 1994**)

603 **Secretary's Recognition Procedures for State Agencies** 5-1

Combines--

Final Regulations
August 20, 1974* (August 20, 1974**)

Final Regulations
December 30, 1980* (December 30, 1980**)

653 **Paul Douglas Teacher Scholarship Program** 6-1

Combines--

Final Regulations
November 25, 1987* (Retroactive to October 17, 1986**)

Final Regulations
August 27, 1990* (October 11, 1990**)

Final Regulations
August 11, 1993* (September 25, 1993**)

654 **Robert C. Byrd Honors Scholarship Program** 7-1

Combines--

Final Regulations
June 20, 1989* (August 4, 1989**)

Final Regulations
August 11, 1993* (September 25, 1993**)

*** Date of Publication**
**** Effective Date**

Part | Page

668 **Student Assistance General Provisions** 8-1

Combines--

Final Regulations
June 28, 1985* (September 2, 1985**)

Final Regulations
March 14, 1986* (April 28, 1986**)

Final Regulations
November 19, 1986* (January 3, 1987**)

Final Regulations
November 28, 1986* (January 29, 1987**)

Final Regulations
December 1, 1986* (January 15, 1987**)

Final Regulations
August 12, 1987* (September 26, 1987**)

Final Regulations
December 1, 1987* (February 3, 1988**)

Final Regulations
May 26, 1988* (July 19, 1988**)

Final Regulations
August 30, 1988* (October 14, 1988**)

Final Regulations
June 5, 1989* (July 20, 1989**, with exceptions of
668.15, 668.23, 668.44, and 668.90)

Final Regulations
August 24, 1989* (668.15, 668.23, 668.44, and
668.90 effective August 24, 1989**)

Final Regulations
September 7, 1989* (Correction to June 5, 1989 Final Regulations)

Final Regulations
November 3, 1989* (December 23, 1989**)

Final Regulations
August 7, 1990* (September 21, 1990**)

Final Regulations
July 19, 1991* (September 2, 1991**, with the exception
of 668.15 and 668.25--September 3, 1991**)

*** Date of Publication**
**** Effective Date**

Part Page

668 **Student Assistance General Provisions** 8-1

(continued)

Final Regulations
July 31, 1991* (September 14, 1991**, Section 668.51
retroactive to July 1, 1991**)

Final Regulations
December 2, 1991* (January 16, 1992**, with the exception
of the revised sections 668.51, 668.53--other than 668.53(a)(5)--
through 668.61. These are applicable beginning with 1992-93 award year.)

Final Regulations
December 23, 1991* (February 6, 1992**)

Final Regulations
August 27, 1992* (November 7, 1992**, with the exception
of 668.61--November 8, 1992**)

Final Regulations
October 19, 1992* (December 3, 1992**)

Final Regulations
December 3, 1992* (January 29, 1993**)

Final Regulations
December 17, 1992* (January 31, 1993**, with the exception
of sections 668.90, 668.98 and 668.124--March 16, 1993**)

Final Regulations
January 7, 1993* (May 4, 1993**)

Final Regulations
March 10, 1993* (April 28, 1993**)

Final Regulations
March 16, 1993* (March 16, 1993**)

Final Regulation
May 4, 1993* (May 4, 1993**)

Final Regulations
June 8, 1993* (July 23, 1993**, with the exception
of sections 668.7 (a)(1)(ii)--December 1, 1987**;
668.7 (a)(6), 668.7 (a)(9), and 668.34--July 1, 1994**;
and 668.22--September 30, 1993**)

Final Regulations
July 23, 1993* (July 1, 1994**)

*** Date of Publication**
**** Effective Date**

Part Page

668 Student Assistance General Provisions 8-1

(continued)

Final Regulations
March 16, 1994* (July 1, 1994**)

Final Regulations
April 28, 1994* (July 1, 1994**)

Final Regulations (59 FR 22278)
April 29, 1994* (June 13, 1994**)

Final Regulations (59 FR 22314)
April 29, 1994* (July 1, 1994**)

Final Regulations (59 FR 22348)
April 29, 1994* (July 1, 1994**)

Final Regulations (59 FR 61142)
November 29, 1994* (July 1, 1995**)

Final Regulations (59 FR 61192)
November 29, 1994* (July 1, 1995**)

Final Regulations (59 FR 61204)
November 29, 1994* (July 1, 1995**)

Final Regulations
December 1, 1994* (July 1, 1995**)

Final Regulations
June 30, 1995* (July 31, 1995**)

Final Regulations--OMB control number added
August 15, 1995* (August 15, 1995**)

Final Regulations
November 29, 1995* (July 1, 1996**)

Final Regulations (60 FR 61760)
December 1, 1995* (July 1, 1996**)

Final Regulations (60 FR 61776)
December 1, 1995* (July 1, 1996**)

Final Regulations (60 FR 61796)
December 1, 1995* (July 1, 1996**)

Final Regulations (60 FR 61830)
December 1, 1995* (July 1, 1996**)

*** Date of Publication**
**** Effective Date**

Part		Page
668	**Student Assistance General Provisions**	8-1
	(continued)	
	Final Regulations February 1, 1996* (July 1, 1996**)	
	Final Regulations June 12, 1996* (July 12, 1996**)	
	Final Regulations--OMB control number added June 13, 1996* (July 1, 1996**)	
	Final Regulations--OMB control number added June 19, 1996* (July 1, 1996**)	
	Final Regulations September 17, 1996* (October 17, 1996**)	
	Final Regulations November 27, 1996* (July 1, 1997**)	
	Final Regulations (61 FR 60565) November 29, 1996* (July 1, 1997**)	
	Final Regulations (61 FR 60578) November 29, 1996* (July 1, 1997**)	
	Final Regulations November 25, 1997* (July 1, 1998**)	
673	**General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program** November 27, 1996* (July 1, 1997**)	9-1
674	**Federal Perkins Loan Program**	10-1
	Combines--	
	Final Regulations November 30, 1987* (February 3, 1988**)	
	Final Regulations December 1, 1987* (February 3, 1988**)	
	Final Regulations July 21, 1992* (September 18, 1992**)	

*** Date of Publication**
**** Effective Date**

Part Page

674 **Federal Perkins Loan Program** 10-1

(continued)

Final Regulations
December 21, 1992* (February 4, 1993**)

Final Regulations
January 12, 1994* (Correction to July 21, 1992 Final Regulations)

Final Regulations
November 30, 1994* (July 1, 1995**)

Final Regulations
December 1, 1994* (July 1, 1995**)

Final Regulations--OMB control number added
June 15, 1995* (July 1, 1995**)

Final Regulations
June 30, 1995* (July 31, 1995**)

Final Regulations
December 1, 1995* (July 1, 1996**)

Final Regulations (61 FR 60390)
November 27, 1996* (July 1, 1997**)

Final Regulations (61 FR 60490)
November 27, 1996* (July 1, 1997**)

Final Regulations
November 29, 1996* (July 1, 1997**)

Final Regulations
September 26, 1997* (October 27, 1997**)

675 **Federal Work-Study Programs** 11-1

Combines--

Final Regulations
December 1, 1987* (February 3, 1988**, with the exception of
675.19, which has no effective date yet)

Final Regulations
August 10, 1988* (September 24, 1988**)

Final Regulations
December 28, 1988* (March 2, 1989**)

*** Date of Publication**
**** Effective Date**

Part Page

675 **Federal Work-Study Programs** 11-1

(continued)

Final Regulations
July 21, 1992* (September 18, 1992**)

Final Regulations
December 21, 1992* (February 4, 1993**)

Final Regulations
November 30, 1994* (July 1, 1995**)

Final Regulations
December 1, 1994* (July 1, 1995**)

Final Regulations
December 1, 1995* (July 1, 1996**)

Final Regulations (61 FR 60390)
November 27, 1996* (July 1, 1997**)

Final Regulations (61 FR 60490)
November 27, 1996* (July 1, 1997**)

Final Regulations
November 29, 1996* (July 1, 1997**)

Final Regulations
September 26, 1997* (October 27, 1997**)

Final Regulations
November 28, 1997* (July 1, 1998**)

676 **Federal Supplemental Educational Opportunity Grant Program** 12-1

Combines--

Final Regulations
December 1, 1987* (February 3, 1988**)

Final Regulations
December 28, 1988* (March 2, 1989**)

Final Regulations
July 21, 1992* (September 18, 1992**)

Final Regulations
December 21, 1992* (February 4, 1993**)

*** Date of Publication**
**** Effective Date**

Part Page

676 **Federal Supplemental Educational Opportunity Grant Program** 12-1

(continued)

Final Regulations
November 30, 1994* (July 1, 1995**)

Final Regulations
December 1, 1994* (July 1, 1995**)

Final Regulations
December 1, 1995* (July 1, 1996**)

Final Regulations (61 FR 60390)
November 27, 1996* (July 1, 1997**)

Final Regulations (61 FR 60490)
November 27, 1996* (July 1, 1997**)

Final Regulations
November 29, 1996* (July 1, 1997**)

Final Regulations
September 26, 1997* (October 27, 1997**)

682 **Federal Family Education Loan (FFEL) Program** 13-1

Combines--

Final Regulations
December 18, 1992* (February 1, 1993**)

Final Regulations
January 7, 1993* (April 13, 1993**)

Final Regulations--OMB control number added
February 19, 1993* (February 19, 1993**)

Final Regulations--OMB control number added
April 13, 1993* (April 13, 1993**)

Final Regulations
January 12, 1994* (Correction to December 18, 1992 Final Regulations)

Final Regulations
April 11, 1994* (July 1, 1994**)

Final Regulations (59 FR 22348)
April 29, 1994* (July 1, 1994**)

*** Date of Publication**
**** Effective Date**

Part Page

682 Federal Family Education Loan (FFEL) Program 13-1

(continued)

Final Regulations (59 FR 22462)
April 29, 1994* (June 13, 1994**)

Final Regulations
May 17, 1994* (July 1, 1994**)

Final Regulations
June 8, 1994* (Correction to April 29, 1994 Final Regulations)

Final Regulations
June 16, 1994* (July 1, 1995**)

Final Regulations
June 24, 1994* (July 1, 1995**)

Final Regulations
June 28, 1994* (July 1, 1995**)

Final Regulations
June 29, 1994* (July 1, 1995**)

Final Regulations
July 13, 1994* (Correction to May 17, 1994 Final Regulations)

Final Regulations--OMB control number added
September 7, 1994* (September 7, 1994**)

Final Regulations
November 25, 1994* (July 1, 1995**)

Final Regulations (59 FR 61142)
November 29, 1994* (July 1, 1995**)

Final Regulations (59 FR 61210)
November 29, 1994* (July 1, 1995**)

Final Regulations
November 30, 1994* (July 1, 1995**)

Final Regulations
December 1, 1994* (July 1, 1995**)

Final Regulations--OMB control number added
June 12, 1995* (July 1, 1995**)

Final Regulations--OMB control number added
June 15, 1995* (July 1, 1995**)

*** Date of Publication**
**** Effective Date**

Part Page

682 **Federal Family Education Loan (FFEL) Program** 13-1

(continued)

Final Regulations
June 29, 1995* (Correction to June 15, 1995 Final Regulations)

Final Regulations (60 FR 61750)
December 1, 1995* (July 1, 1996**)

Final Regulations (60 FR 61796)
December 1, 1995* (July 1, 1996**)

Final Regulations--OMB control number added
April 17, 1996* (July 1, 1996**)

Final Regulations (61 FR 60426)
November 27, 1996* (July 1, 1997**)

Final Regulations (61 FR 60478)
November 27, 1996* (July 1, 1997**, with the exception
of section 682.404(f)--January 1, 1998** and applicable
to payments received on or after January 1, 1998)

Final Regulations (61 FR 60490)
November 27, 1996* (July 1, 1997**)

Final Regulations
November 29, 1996* (July 1, 1997**)

Final Regulations
November 28, 1997* (July 1, 1998**)

685 **William D. Ford Federal Direct Loan Program** 14-1

Combines--

Final Regulations
December 1, 1994* (July 1, 1995**)

Final Regulations--OMB control number added
June 28, 1995* (July 1, 1995**)

Final Regulations (60 FR 61790)
December 1, 1995* (July 1, 1996**)

Final Regulations (60 FR 61795)
December 1, 1995* (July 1, 1996**)

*** Date of Publication**
**** Effective Date**

Part | Page

685 William D. Ford Federal Direct Loan Program 14-1

(continued)

Final Regulations (60 FR 61820)
December 1, 1995* (July 1, 1996**)

Final Regulations
June 12, 1996* (July 12, 1996**)

Final Regulations
June 19, 1996* (July 1, 1996**)

Final Regulations
November 27, 1996* (July 1, 1997**)

Final Regulations
November 29, 1996* (July 1, 1997**)

Final Regulations
May 9, 1997* (July 1, 1996**)

Final Regulations
June 3, 1997* (June 3, 1997**)

Final Regulations
July 1, 1997* (July 1, 1997**)

Final Regulations
November 28, 1997* (July 1, 1998**)

690 Federal Pell Grant Program 15-1

Combines--

Final Regulations
March 15, 1985* (April 19, 1985**)

Final Regulations
November 19, 1986* (January 3, 1987**)

Final Regulations
November 28, 1986* (January 29, 1987**)

Final Regulations
October 14, 1987* (December 9, 1987**)

Final Regulations
April 12, 1989* (June 9, 1989**)
[Effective date corrected per April 25, 1989
Federal Register]

*** Date of Publication**
**** Effective Date**

Part — Page

691 **Presidential Access Scholarship Program** 16-1
November 1, 1994* (July 1, 1995**)

692 **State Student Incentive Grant Program** 17-1

Combines--

Final Regulations
November 27, 1987* (February 3, 1988**)

Final Regulations
May 25, 1990* (July 19, 1990**)

Final Regulations
January 28, 1994* (March 14, 1994**)

693 **National Early Intervention Scholarship and Partnership Program** 18-1
May 12, 1994* (June 26, 1994**)

Appendix A--List of Final Regulations Published in 1997 .... A-1

Appendix B--Summary of Changes in Final Regulations Published in 1997 .... B-1

*** Date of Publication**
**** Effective Date**

Part Page

690 Federal Pell Grant Program 15-1

(continued)

Final Regulations
April 5, 1990* (May 20, 1990**)

Final Regulations
January 16, 1991* (March 2, 1991**)

Final Regulations
November 6, 1991* (December 28, 1991**, with the exception of 690.77 and 690.83)

Final Regulations
January 17, 1992* (Correction to November 6, 1991 Final Regulations)

Final Regulations
June 25, 1992* (August 9, 1992**)

Final Regulations
April 29, 1994* (July 1, 1994**)

Final Regulations
November 1, 1994* (July 1, 1995**)

Final Regulations
December 1, 1994* (July 1, 1995**)

Final Regulations
May 2, 1995* (Correction to November 1, 1994 Final Regulations)

Final Regulations--OMB control number added
June 12, 1995* (July 1, 1995**)

Final Regulations
December 1, 1995* (July 1, 1996**)

Final Regulations
February 1, 1996* (July 1, 1996**)

Final Regulations (61 FR 60390)
November 27, 1996* (July 1, 1997**)

Final Regulations (61 FR 60490)
November 27, 1996* (July 1, 1997**)

Final Regulations
November 29, 1996* (July 1, 1997**)

*** Date of Publication**
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Introduction: Understanding a Regulation

This compilation includes the regulations for the Student Financial Assistance (SFA) programs that are administered by the Office of Postsecondary Education within the U.S. Department of Education. Many of these programs are authorized by Title IV of the Higher Education Act of 1965, as amended, and have come to be known as the "Title IV programs."

The relationship of law to regulations

The statutory language that authorizes the SFA programs specifies many of the eligibility and administrative requirements for participation in the programs. Major changes are usually made every 4-5 years when the programs are reauthorized. The most recent reauthorization took place with the Higher Education Amendments of 1992. For example, the 1992 Amendments removed the dollar limit on PLUS loans, making loans available up to the amount of the student's cost of attendance (minus any other expected aid).

Other changes to the law may be made on an annual basis as a part of the appropriations process. For instance, the Omnibus Reconciliation Act of 1993 eliminated the Federal Supplemental Loans for Students (SLS) program.

Some legislative changes are written directly into the regulations. For instance, when §484 of the Act was amended to specify how satisfactory progress is measured, this language was added to Section 668.7 of the General Provisions.

In other cases, regulatory language must be written that explains how the statute is to be implemented. Examples of regulatory provisions that are not specified in the law include the method for calculating Pell Grants for a payment period, and the refund formula.

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Proposed rules, final rules, and notices

New regulations may be issued as proposed regulations, final regulations, or notices and are published in a government publication called the **Federal Register**. Regulations are usually published first as a Notice of Proposed Rulemaking (NPRM). An NPRM includes background information, proposed changes to current regulations, and the address and closing (due) date for receiving comments from the public. After the Department receives comments on an NPRM from the public, it reviews the comments, incorporates any needed changes, and publishes final regulations.

In some cases, regulations are not preceded by an NPRM, but are published as a Final Rule—for instance, when the regulations simply incorporate recent statutory changes, or when the Secretary finds that solicitation of public comments would be otherwise impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B). Final regulations supplement, amend, or replace earlier final regulations. Regulations published as notices generally concern procedural matters that do not require a review or comment period. The law requires some notices to be published annually—for example, notices of program deadline dates and notices to update need-analysis charts.

How regulations are developed

Regulations for the SFA programs are developed by the appropriate organizational unit within the Office of Postsecondary Education—OPE (refer to the chart on the opposite page). For example, the regulations for the Federal Pell Grant Program are developed by the Pell and State Grants Section in the Grants Branch.

The text of the regulation, whether it is a notice, NPRM, or final regulation, must be reviewed and approved by other offices within the Department, such as the Office of the General Counsel and the Office of the Inspector General. After the comments from these offices have been incorporated in the regulation or otherwise resolved, the draft regulation is submitted to the Office of Management and Budget for review of:

- overall federal policy;
- budget implications;
- potential paperwork burden; and
- cost to the service population (in the case of ED, institutions of postsecondary education, lenders, guaranty agencies, students, and parents).

When the Department publishes a proposed regulation, the preamble to the regulation will explain where comments should be sent, and specify the length of the comment period. The comment period is usually 30, 45, 60, or 120 days. After the comment period ends, the office that drafted the regulation reviews all of the comments that were received. In most cases, these comments reflect administrative and other problems that might arise if the regulation was implemented as first proposed. The originating office must weigh the concerns voiced by the service population and the interest of the general public in ensuring program integrity, as it decides if changes should be made as a result of these comments. Once the originating office has drafted a final regulation, that regulation must again be reviewed by other offices in the Department, and by the Office of Management and Budget.

When final regulations are published, they include a summary of the comments received and the Department's responses to them. Any changes incorporated in the final regulations that resulted from the comments are noted. In addition, if the Department has not made changes for the final regulations as recommended in the comments, the Department will explain its reasons for that decision.

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Negotiated rulemaking

The law requires certain categories of regulations to undergo a review process called "Negotiated Rulemaking" before they are published as an NPRM. For example, the Higher Education Amendments of 1992 required the Department to convene regional meetings to obtain public involvement in developing proposed regulations pertaining to the Federal Family Education Loan Program, general provisions, and program integrity (state postsecondary review program, accrediting agency approval, and eligibility and certification procedures). These meetings included individuals and representatives of the groups involved in the SFA programs, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.

The attendees at these public meetings were given the opportunity to nominate individuals to serve as negotiators at later sessions. From this list of nominees, the Department selected a panel of negotiators. To the extent possible, the Department selected individuals reflecting the diversity in the industry, representing both large and small participants, as well as individuals serving local areas and national markets. The negotiation sessions were held at conference facilities secured by the Department, and lasted a week at a time. For some regulations, as many as three of these week-long sessions were necessary to allow full discussion of the issues raised by the negotiators. The sessions were moderated by an independent mediator retained by the Department.

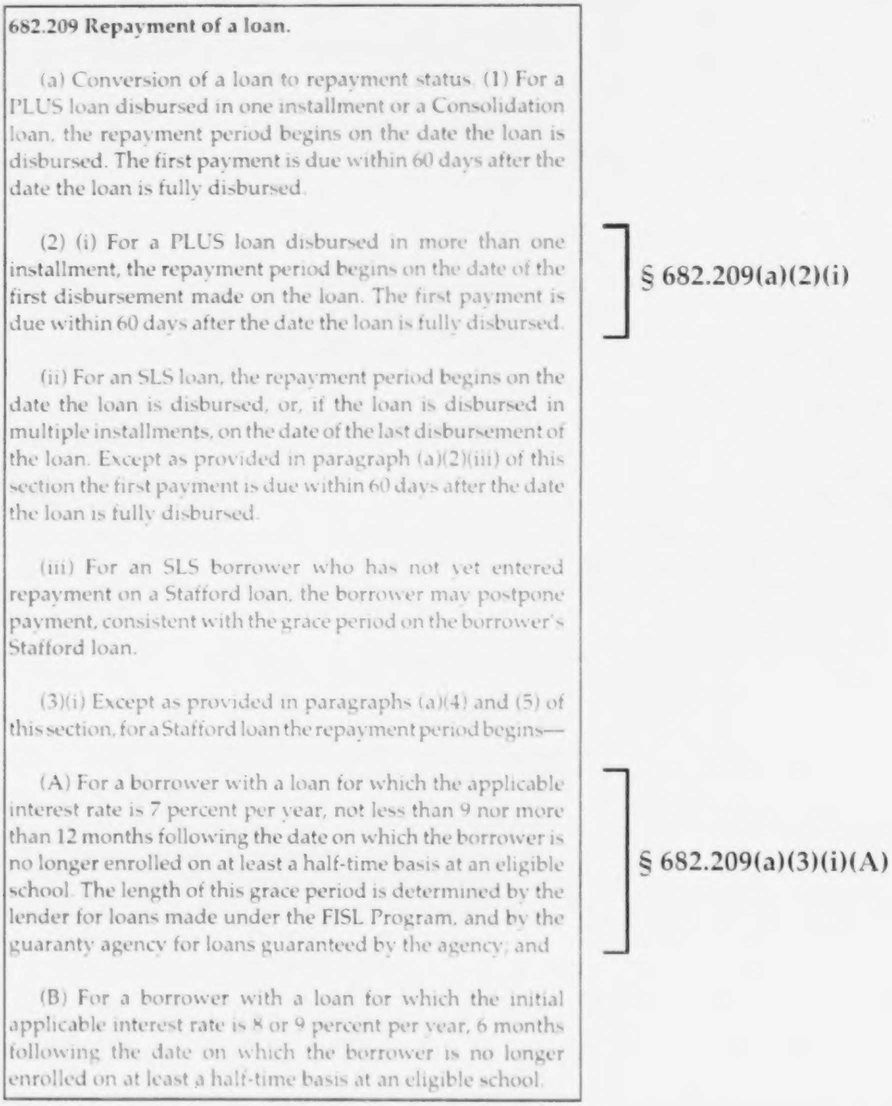
Following a comprehensive discussion and exchange of information, the Department took into account the information received at those meetings as it developed the proposed regulations that were published in the **Federal Register**.

How regulations are numbered by Title, Part , and Section

The **Federal Register** provides a uniform system for publishing federal documents. The basic component of the system is the Code of Federal Regulations (CFR). The CFR is divided into 50 titles according to subject matter. Each title is further divided into parts. Federal regulations relating to education are designated as "Title 34 of the Code of Federal Regulations" or "34 CFR." The Title 34 regulations are presently published in three volumes (Parts 1 to 299, Parts 300 to 399, and Part 400 to end). Regulations governing the SFA programs for postsecondary education currently include the following parts under Title 34:

PART	SUBJECT
86	Drug Free Schools and Campuses
99	Family Educational Rights and Privacy
600	Institutional eligibility
602	Secretary's procedures and criteria for recognition of accrediting agencies
603	Secretary's recognition procedures for State agencies
653	Paul Douglas teacher scholarship program
654	Robert C. Byrd Honors Scholarship Program
668	Student Assistance General Provisions
673	General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Grant Program
674	Federal Perkins Loan Program
675	Federal Work-Study Program
676	Supplemental Educational Opportunity Grant Program
682	Federal Family Education Loan Programs
685	William D. Ford Federal Direct Student Loan Program
690	Federal Pell Grant Program
691	Presidential Access Scholarship Program
692	State Student Incentive Grant Program
693	National Early Intervention Scholarship and Partnership Program

Each part of the regulations is divided into sections. For example, Section 682.209 of the final regulations for the Federal Family Education Loan Programs, published December 18, 1992, is titled "Repayment of a Loan." When referring to this section, it may be cited as "Section 682.209," "§ 682.209," or "34 CFR 682.209."



682.209 Repayment of a loan.

(a) Conversion of a loan to repayment status. (1) For a PLUS loan disbursed in one installment or a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2) (i) For a PLUS loan disbursed in more than one installment, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(iii) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford loan.

(3)(i) Except as provided in paragraphs (a)(4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is 7 percent per year, not less than 9 nor more than 12 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guaranty agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

§ 682.209(a)(2)(i)

§ 682.209(a)(3)(i)(A)

Sections are divided into subsections with the following sequential lettering and numbering system: (a), (1), (i), and (A). For example, the first bracketed subsection (shown above) would be referred to as § 682.209(a)(2)(i); the second bracketed subsection would be referred to as § 682.209(a)(3)(i)(A).

Reading a proposed regulation

The preamble of a regulation contains much useful information about the contents of the regulation and the intent of the regulatory changes. The preamble for an NPRM includes:

- Basic identifying information, such as the title of the regulations and the type of regulation.

> **DEPARTMENT OF EDUCATION**
>
> **34 CFR Part 668**
>
> **RIN 1840-AC10**
>
> **Student Assistance General Provisions**
>
> **AGENCY:** Department of Education
> **ACTION:** Notice of proposed rulemaking

- A summary statement of the purpose of the regulation. Note that the summary statement is usually the quickest place to identify the topics covered by the regulation. In the example below, the Summary specifically identifies the topic as "Verification," while the title of the regulation is simply "Student Assistance General Provisions."

> **SUMMARY:** The Secretary proposes to amend Subpart E of the Student Assistance General Provisions regulations, 34 CFR Part 668, Verification of Student Aid Application Information, to implement revisions resulting from the Higher Education Amendments of 1992 (Pub. L. 103-325) ...

- The due date for public comments (may also include dates for public hearings if they are to be held).

> **DATES:** Comments must be received on or before May 31, 1994.

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- The address for comments, and the person and telephone number to contact for further information.

> **ADDRESSES:** All comments concerning these proposed regulations should be addressed to Shirley Regwriter, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, Room 4318, Washington, DC 20202-5451.
> **FOR FURTHER INFORMATION CONTACT:** Shirley Regwriter, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, Room 4318, Washington, DC 20202-5451. Telephone (202) 000-0000.

- A "supplementary information" section. For most regulations, this section of the preamble is the best place to find a concise summary of the proposed changes and the reasons for the changes.

> **SUPPLEMENTARY INFORMATION:** Subpart E of the Student Assistance General Provisions regulations governs the verification of the information that is used to calculate an applicant's expected family contribution as a part of the determination of the applicant's need for student financial assistance.
>
> **Summary of Proposed Changes**
>
> The Secretary proposes to change the requirement in §668.54 that determines the percentage of selected applicants required to be verified annually by an institution in any award year. The Secretary also proposes to change the amount of the dollar tolerance option in §668.59.

The preamble concludes with certifications that the regulation complies with Executive Order 12866 (cost/benefit analysis) and the Regulatory Flexibility Act (impact on small entities), and a List of Subjects covered in the regulation.

The actual regulation follows the preamble—in many cases, the regulation is much shorter than the preamble. To save space, the **Federal Register** sometimes does not contain the entire text of an existing regulation. Instead, only the language that is being changed will be printed, with the appropriate section references to indicate where the change is being made. To make sure that you understand the effect of these changes, you must compare the printed changes with the complete text of the regulation that is being amended.

> The Secretary amends Part 668 of the Title 34 of the Code of Federal Regulations as follows:
>
> **PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**
>
> 1. The authority citation for Part 668 continues to read as follows:
>
> **Authority:** 20 U.S.C. 1085, 1091, 1092, 1094, and 1141, unless otherwise noted.
>
> 2. Section 668.7 is amended by revising paragraph (a)(4)(iii) as follows:
>
> **§668.7 Eligible student.**
>
> (a) * * *
>
> * * * * *
>
> (4) * * *
>
> (iii) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau); or
>
> * * * * *

(These changes have been inserted into the compilation of regulations, so that you will have the complete text of the regulations as of the date that the compilation was sent to print.)

Reading a final regulation

The structure of a final regulation is very similar to that for a proposed rule. Many of the same elements described previously for proposed rules will be included in the preamble for a final rule, with the following major exceptions:

- The preamble for a final regulation will not give an address for comments unless it is an "interim final" regulation with comments invited.
- The preamble will include a section that gives the effective dates for the regulatory provisions.
- A "waiver of rulemaking" may be included if the final rule includes statutory or other changes that did not require public comment.
- The "supplementary information" section will include a summary of the comments received from the public, with the Department's decision.

> **Analysis of Comments and Changes**
>
> In response to the Secretary's invitation in the NPRM, 81 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.
>
> *Section 668.2 General Definitions*
>
> *Comments:* Several commentors supported the proposed changes to the general definitions. One commentor recommended clarifying the definitions of the PLUS Program, Stafford Loan Program and the Supplemental Loans for Students Program by adding the phrase, "to help pay for the costs of the student's postsecondary education" at the end of the definitions.
>
> *Discussion:* These definitions were amended to make them consistent with the definitions proposed in 34 CFR 682.100 of the November 20, 1990 Notice of Proposed Rulemaking for the Guaranteed Student Loan programs. The Secretary believes that further clarification is unnecessary.
>
> *Changes:* None

Note that similar comments on a single issue may be addressed in a single comment and response.

The "supplementary information" section will also include a summary, usually, bulleted, of the major changes made in the final regulation. Please note that the summary of changes for a final regulation only lists those changes that were made to the *proposed* regulation—the summary does not list those proposed changes that were adopted without further modification. Therefore, you must refer to the preamble of the NPRM as well as the final regulation for a complete summary of the changes that were adopted in the final regulation.

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Effective Dates

Generally, regulations become effective following a 45-day period prescribed by law that follows immediately after the date of publication in the **Federal Register**. However, if the Congress adjourns during the 45-day period, some provisions of the regulations may have a later effective date. In addition, some portions of the regulation that include recordkeeping requirements may have other effective dates that depend on the approval of these information collection requirements by the Office of Management and Budget. These later effective dates will be published in the **Federal Register** when they are known.

The effective dates for a regulation can depend on other constraints, as well. The master calendar specified by the Higher Education Amendments of 1986 requires major regulations to be published in final form by December 1 in order to be effective for the next award year. (For instance, a regulation would have to be published by December 1, 1995 to be effective for the 1996-97 award year.) The purpose of this provision is to give schools sufficient time to adjust to new regulatory changes before the new award year begins on July 1. The master calendar also requires annual updates to the tables used in the need analysis formulas to calculate expected family contributions; the tables must be published by June 1 of the year preceding the applicable award year.

To help you find when requirements took effect, we have included some of the more recent effective dates in small print at the end of each section of the regulations.

Distribution of the regulations

The Department orders reprints of SFA program regulations from the Government Printing Office and mails them to all schools that participate in the programs. (Reprints take several weeks for delivery to the Department.) The Information Section (within the Training and Program Information Division) oversees the distribution of the regulations and also makes them available electronically to a user's PC or main-frame terminal through the OPE electronic bulletin board, OPENet. Over the next year, we also expect to make the regulations accessible through a new bulletin board that can be accessed at no charge through the Internet or by modem through a toll-free number.

If you are looking for a particular program regulation, you may order a copy from the Federal Student Aid Information Center, at 1-800-4 FED AID. Please be sure to specify the date when the regulation was published. While supplies last, you may also order individual copies of the *Compilation of Student Aid Regulations* from the Information Center.

The Compilation of Regulations

PART 86--DRUG-FREE SCHOOLS AND CAMPUSES

Subpart A--General

Sec.

86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

86.2 What Federal programs are covered by this part?

86.3 What actions shall an IHE, SEA, or LEA take to comply with the requirements of this part?

86.4 What are the procedures for submitting a drug prevention program certification?

86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

86.7 What definitions apply to this part?

Subpart B--Institutions of Higher Education

86.100 What must the IHE's drug prevention program include?

86.101 What review of IHE drug prevention programs does the Secretary conduct?

86.102 What is required of an IHE that the Secretary selects for annual review?

86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

Subpart C--State and Local Educational Agencies

86.200 What must the SEA's and LEA's drug prevention program for students include?

86.201 What must the SEA's and LEA's drug prevention program for employees include?

86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

86.203 What is required of an SEA or LEA that is selected for review?

86.204 What records and information must an SEA or LEA make available to the Secretary and the public concerning its drug prevention program?

Subpart D--Response and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

86.302 What are the procedures used by the Secretary for providing information or technical assistance?

86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?

86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

Subpart E--Appeal Procedures

86.400 What is the scope of this subpart?

86.401 What are the authority and responsibility of the ALJ?

86.402 Who may be a party in a hearing under this subpart?

86.403 May a party be represented by counsel?

86.404 How may a party communicate with an ALJ?

86.405 What are the requirements for filing written submissions?

86.406 What must the ALJ do if the parties enter settlement negotiations?

86.407 What are the procedures for scheduling a hearing?

86.408 What are the procedures for conducting a pre-hearing conference?

86.409 What are the procedures for conducting a hearing on the record?

86.410 What are the procedures for issuance of a decision?

86.411 What are the procedures for requesting reinstatement of eligibility?

Authority: 20 U.S.C. 1145g, 3224a.

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PART 86--DRUG-FREE SCHOOLS AND CAMPUSES

Subpart A--General

Sec. 86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

The purpose of the Drug-Free Schools and Campuses Regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which adds section 1213 to the Higher Education Act and section 5145 to the Drug-Free Schools and Communities Act. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE), State educational agency (SEA), or local educational agency (LEA) must certify that it has adopted and implemented a drug prevention program as described in this part.

(Authority: 20 U.S.C. 1145g, 3224a).

Sec. 86.2 What Federal programs are covered by this part?

The Federal programs covered by this part include—

(a) All programs administered by the Department of Education under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance; and

(b) All programs administered by any other Federal agency under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.3 What actions shall an IHE, SEA, or LEA take to comply with the requirements of this part?

(a) An IHE, SEA, or LEA shall adopt and implement a drug prevention program as described in Sec. 86.100 for IHEs, and Secs. 86.200 and 86.201 for SEAs and LEAs, to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities.

(b) An IHE, SEA, or LEA shall provide a written certification that it has adopted and implemented the drug prevention program described in Sec. 86.100 for IHEs, and Secs. 86.200 and 86.201 for SEAs and LEAs.

(Authority: 20 U.S.C. 1145g, 3224a)

(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.4 What are the procedures for submitting a drug prevention program certification?

(a) *IHE drug prevention program certification.* An IHE shall submit to the Secretary the drug prevention program certification required by Sec. 86.3(b).

(b) *SEA drug prevention program certification.* An SEA shall submit to the Secretary the drug prevention program certification required by Sec. 86.3(b).

(c) *LEA drug prevention program.*

(1) The SEA shall develop a drug prevention program certification form and a schedule for submission of the certification by each LEA within its jurisdiction.

(2) An LEA shall submit to the SEA the drug prevention program certification required by Sec. 86.3(b).

(3)(i) The SEA shall provide to the Secretary a list of LEAs that have not submitted drug prevention program certifications and certify that all other LEAs in the State have submitted drug prevention program certifications to the SEA.

(ii) The SEA shall submit updates to the Secretary so that the list of LEAs described in paragraph (c)(3)(i) of this section is accurate at all times.

(Authority: 20 U.S.C. 1145g, 3224a)

(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

(a) An IHE, SEA, or LEA that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE, SEA, or LEA receives or desires to receive assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

(a) After October 1, 1990, except as provided in paragraph (b) of this section, an IHE, SEA, or LEA is not eligible to receive funds or any other form of financial assistance under any Federal program until the IHE, SEA, or LEA has submitted a drug prevention program certification.

(b)(1) The Secretary may allow an IHE, SEA, or LEA until not later than April 1, 1991, to submit the drug prevention program certification, only if the IHE, SEA, or LEA establishes that it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(2) An IHE, SEA, or LEA that wants to receive an extension of time to submit its drug prevention program

certification shall submit a written justification to the Secretary that—

(i) Describes each part of its drug prevention program, whether in effect or planned;

(ii) Provides a schedule to complete and implement its drug prevention program; and

(iii) Explains why it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(3)(i) An IHE or SEA shall submit a request for an extension to the Secretary.

(ii)(A) An LEA shall submit any request for an extension to the SEA.

(B) The SEA shall transmit any such request for an extension to the Secretary.

(C) The SEA may include with the LEA's request a recommendation as to whether the Secretary should approve it.

(Authority: 20 U.S.C. 1145g, 3224a)

(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.7 What definitions apply to this part?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in this part are defined in the Act:

Drug abuse education and prevention
Illicit drug use

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77:

Department
EDGAR
Local educational agency
Secretary
State educational agency.

(c) *Other definitions.* The following terms used in this part are defined as follows:

Compliance agreement means an agreement between the Secretary and an IHE, SEA, or LEA that is not in full compliance with its drug prevention program certification. The agreement specifies the steps the IHE, SEA, or LEA will take to comply fully with its drug prevention program certification, and provides a schedule for the accomplishment of those steps. A compliance agreement does not excuse or remedy past violations of this part.

Institution of higher education means—

(1) An institution of higher education, as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education, as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution, as defined in 34 CFR 600.6; and

(4) A vocational school, as defined in 34 CFR 600.7.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart B--Institutions of Higher Education

Sec. 86.100 What must the IHE's drug prevention program include?

The IHE's drug prevention program must, at a minimum, include the following:

(a) The annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit except for continuing education units, regardless of the length of the student's program of study, of—

(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(3) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

(4) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(5) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (a)(1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(b) A biennial review by the IHE of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (a)(6) of this section are consistently enforced.

(Authority: 20 U.S.C. 1145g)

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(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.101 What review of IHE drug prevention programs does the Secretary conduct?

The Secretary annually reviews a representative sample of IHE drug prevention programs.

(Authority: 20 U.S.C. 1145g)

Sec. 86.102 What is required of an IHE that the Secretary selects for annual review?

If the Secretary selects an IHE for review under Sec. 86.101, the IHE shall provide the Secretary access to personnel, records, documents and any other necessary information requested by the Secretary to review the IHE's adoption and implementation of its drug prevention program.

(Authority: 20 U.S.C. 1145g)

(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

(a) Each IHE that provides the drug prevention program certification required by Sec. 86.3(b) shall, upon request, make available to the Secretary and the public a copy of each item required by Sec. 86.100(a) as well as the results of the biennial review required by Sec. 86.100(b).

(b)(1) An IHE shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraph (a) of this section.

(ii) Any other records reasonably related to the IHE's compliance with the drug prevention program certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the IHE shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Authority: 20 U.S.C. 1145g)

(Approved by the Office of Management and Budget under control number 1880-0552)

Subpart C--State and Local Educational Agencies

Sec. 86.200 What must the SEA's and LEA's drug prevention program for students include?

The SEA's and LEA's program for all students must, at a minimum, include the following:

(a) Age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for all students in all grades of the schools operated or served by the SEA or LEA, from early childhood level through grade 12.

(b) A statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful.

(c) Standards of conduct that are applicable to students in all the SEA's and LEA's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as part of any of its activities.

(d) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law), up to and including expulsion and referral for prosecution, will be imposed on students who violate the standards of conduct required by paragraph (c) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(e) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to students.

(f) A requirement that all parents and students be given a copy of the standards of conduct required by paragraph (c) of this section and the statement of disciplinary sanctions described in paragraph (d) of this section.

(g) Notification to parents and students that compliance with the standards of conduct required by paragraph (c) of this section is mandatory.

(h) A biennial review by the SEA or LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (d) of this section are consistently enforced.

(Authority: 20 U.S.C. 3224a)

(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.201 What must the SEA's and LEA's drug prevention program for employees include?

The SEA's and LEA's program for all employees must, at a minimum, include the following:

(a) Standards of conduct applicable to employees that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as part of any of its activities.

(b) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law) up to and including termination of employment and referral for prosecution, will be imposed on employees who violate the standards of conduct required by paragraph (a) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(c) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to employees.

(d) A requirement that employees be given a copy of the standards of conduct required by paragraph (a) of this section and the statement of disciplinary sanctions described in paragraph (b) of this section.

(e) Notification to employees that compliance with the standards of conduct required by paragraph (a) of this section is mandatory.

(f) A biennial review of the SEA and LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (b) of this section are consistently enforced.

(Authority: 20 U.S.C. 3224a)

(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

(a)(1) An SEA shall annually review a representative sample of LEA programs.

(2) If an SEA finds, as a result of its annual review, that an LEA has failed to implement its program or consistently enforce its disciplinary sanctions, the SEA shall submit that information, along with the findings of its review, to the Secretary within thirty (30) days after completion of the review.

(b) The Secretary may annually select a representative sample of SEA programs for review.

(Authority: 20 U.S.C. 3224a)

(Approved by the Office of Management and Budget under control number 1880-0522)

Sec. 86.203 What is required of an SEA or LEA that is selected for review?

(a) If the Secretary selects an SEA for review under Sec. 86.202(b), the SEA shall provide the Secretary access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(b) If the SEA selects an LEA for review under Sec. 86.202(a), the LEA shall provide the SEA access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(Authority: 20 U.S.C. 3224a)

Sec. 86.204 What records and information must an SEA or LEA make available to the Secretary and the public concerning its drug prevention program?

(a)(1) Each SEA that provides the drug prevention program certification shall, upon request, make available to the Secretary and the public full information about the elements of its drug prevention program, including the results of its biennial review required by Secs. 86.200(h) and 86.201(F).

(2) The SEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the SEA's compliance with the certification.

(b)(1) Each LEA that provides the drug prevention program certification shall, upon request, make available to the Secretary, the SEA, and the public full information about the elements of its program, including the results of its biennial review required by Secs. 86.200(h) and 86.201(f).

(2) The LEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the LEA's compliance with the certification.

(c)(1) Each SEA or LEA shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraphs (a) and (b) of this section.

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(ii) Any other records related to the SEA's or LEA's compliance with the certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the SEA or LEA shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 3224a)

Subpart D--Responses and Sanctions Issued or Imposed by the Secretary for violations by an IHE, SEA, or LEA

Sec. 86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

An IHE, SEA, or LEA violates this part by—

(a) Receiving any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification in accordance with Sec. 86.3(b); or

(b) Violating its certification. Violation of a certification includes failure of an IHE, SEA, or LEA to—

(1) Adopt or implement its drug prevention program; or

(2) Consistently enforce its disciplinary sanctions for violations by students and employees of the standards of conduct adopted by an IHE under Sec. 86.100(a)(1) or by an SEA or LEA under Secs. 86.200(c) and 86.201(a).

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

(a) If an IHE, SEA, or LEA violates its certification, the Secretary may issue a response to the IHE, SEA, or LEA. A response may include, but is not limited to—

(1) Provision of information and technical assistance; and

(2) Formulation of a compliance agreement designed to bring the IHE, SEA, or LEA into full compliance with this part as soon as feasible.

(b) If an IHE, SEA, or LEA receives any form of Federal financial assistance without having submitted a certification or violates its certification, the Secretary may impose one or more sanctions on the IHE, SEA, or LEA, including—

(1) Repayment of any or all forms of Federal financial assistance received by the IHE, SEA, or LEA when it was in violation of this part; and

(2) The termination of any or all forms of Federal financial assistance that—

(i)(A) Except as specified in paragraph (b)(2)(ii) of this section, ends an IHE's, SEA's, or LEA's eligibility to receive any or all forms of Federal financial assistance. The Secretary specifies which forms of Federal financial assistance would be affected; and

(B) Prohibits an IHE, SEA, or LEA from making any new obligations against Federal funds; and

(ii) For purposes of an IHE's participation in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965 as amended, has the same effect as a termination under 34 CFR 668.94.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.302 What are the procedures used by the Secretary for providing information or technical assistance?

(a) The Secretary provides information or technical assistance to an IHE, SEA, or LEA in writing, through site visits, or by other means.

(b) The IHE, SEA, or LEA shall inform the Secretary of any corrective action it has taken within a period specified by the Secretary.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?

(a) If the Secretary intends to issue a response other than the formulation of a compliance agreement or the provision of information or technical assistance, the Secretary notifies the IHE, SEA, or LEA in writing of—

(1) The Secretary's determination that there are grounds to issue a response other than the formulation of a compliance agreement or providing information or technical assistance; and

(2) The response the Secretary intends to issue.

(b) An IHE, SEA, or LEA may submit written comments to the Secretary on the determination under paragraph (a)(1) of this section and the intended response under paragraph (a)(2) of this section within 30 days after the date the IHE, SEA, or LEA receives the notification of the Secretary's intent to issue a response.

(c) Based on the initial notification and the written comments of the IHE, SEA, or LEA, the Secretary makes a final determination and, if appropriate, issues a final response.

(d) The IHE, SEA, or LEA shall inform the Secretary of the corrective action it has taken in order to comply with the terms of the Secretary's response within a period specified by the Secretary.

(e) If an IHE, SEA, or LEA does not comply with the terms of a response issued by the Secretary, the Secretary may issue an additional response or impose a sanction on the IHE, SEA, or LEA in accordance with the procedures in Sec. 86.304.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

(a) A designated Department official begins a proceeding for repayment of Federal financial assistance or termination, or both, of an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance by sending the IHE, SEA, or LEA a notice by certified mail with return receipt requested. This notice—

(1) Informs the IHE, SEA, or LEA of the Secretary's intent to demand repayment of Federal financial assistance or to terminate, describes the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(2) Specifies, as appropriate—

(i) The amount of Federal financial assistance that must be repaid and the date by which the IHE, SEA, or LEA must repay the funds; and

(ii) The proposed effective date of the termination, which must be at least 30 days after the date of receipt of the notice of intent, and

(3) Informs the IHE, SEA, or LEA that the repayment of Federal financial assistance will not be required or that the termination will not be effective on the date specified in the notice if the designated Department official receives, within a 30-day period beginning on the date the IHE, SEA, or LEA receives the notice of intent described in this paragraph—

(i) Written material indicating why the repayment of Federal financial assistance or termination should not take place, or

(ii) A request for a hearing that contains a concise statement of disputed issues of law and fact, the IHE's, SEA's, or LEA's position with respect to these issues, and, if appropriate, a description of which Federal financial assistance the IHE, SEA, or LEA contends need not be repaid.

(b) If the IHE, SEA, or LEA does not request a hearing but submits written material—

(1) The IHE, SEA, or LEA receives no additional opportunity to request or receive a hearing; and

(2) The designated Department official, after considering the written material, notifies the IHE, SEA, or LEA in writing whether—

(i) Any or all of the Federal financial assistance must be repaid; or

(ii) The proposed termination is dismissed or imposed as of a specified date.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart E--Appeal Procedures

Sec. 86.400 What is the scope of this subpart?

(a) The procedures in this subpart are the exclusive procedures governing appeals of decisions by a designated Department official to demand the repayment of Federal financial assistance or terminate the eligibility of an IHE, SEA, or LEA to receive some or all forms of Federal financial assistance for violations of this part.

(b) An Administrative Law Judge (ALJ) hears appeals under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.401 What are the authority and responsibility of the ALJ?

(a) The ALJ regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b) The ALJ is not authorized to issue subpoenas.

(c) The ALJ takes whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The scope of the ALJ's review is limited to determining whether—

(1) The IHE, SEA, or LEA received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification; or

(2) The IHE, SEA, or LEA violated its certification.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.402 Who may be a party in a hearing under this subpart?

(a) Only the designated Department official and the IHE, SEA, or LEA that is the subject of the proposed termination or recovery of Federal financial assistance may be parties in a hearing under this subpart.

(b) Except as provided in this subpart, no person or organization other than a party may participate in a hearing under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.403 May a party be represented by counsel?

A party may be represented by counsel.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.404 How may a party communicate with an ALJ?

(a) A party may not communicate with an ALJ on any fact at issue in the case or on any matter relevant to the merits of the case unless the other party is given notice and an opportunity to participate.

(b)(1) To obtain an order or ruling from an ALJ, a party shall make a motion to the ALJ.

(2) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(3) If a party files a written motion, the party shall do so in accordance with Sec. 86.405.

(4) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(5) The date of service of a motion is determined by the standards for determining a filing date in Sec. 86.405(d).

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.405 What are the requirements for filing written submissions?

(a) Any written submission under this subpart must be filed by hand-delivery or by mail through the U.S. Postal Service.

(b) If a party files a brief or other document, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next Federal business day.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.406 What must the ALJ do if the parties enter settlement negotiations?

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or for the parties to obtain approval of a settlement agreement, the ALJ grants the stay.

(b) The following are not admissible in any proceeding under this part:

(1) Evidence of conduct during settlement negotiations.

(2) Statements made during settlement negotiations.

(3) Terms of settlement offers.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.407 What are the procedures for scheduling a hearing?

(a) If the IHE, SEA, or LEA requests a hearing by the time specified in Sec. 86.403(a)(3), the designated Department official sets the date and the place.

(b)(1) The date is at least 15 days after the designated Department official receives the request and no later than 45 days after the request for hearing is received by the Department.

(2) On the motion of either or both parties, the ALJ may extend the period before the hearing is scheduled beyond the 45 days specified in paragraph (b)(1) of this section.

(c) No termination takes effect until after a hearing is held and a decision is issued by the Department.

(d) With the approval of the ALJ and the consent of the designated Department official and the IHE, SEA, or LEA, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.408 What are the procedures for conducting a pre-hearing conference?

(a)(1) A pre-hearing conference may be convened by the ALJ if the ALJ thinks that such a conference would be useful, or if requested by—

(i) The designated Department official; or

(ii) The IHE, SEA, or LEA.

(2) The purpose of a pre-hearing conference is to allow the parties to settle, narrow, or clarify the dispute.

(b) A pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.409 What are the procedures for conducting a hearing on the record?

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an ALJ.

(b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) The hearing process may be expedited as agreed by the ALJ, the designated Department official, and the IHE, SEA, or LEA. Procedures to expedite may include, but are not limited to, the following:

(1) A restriction on the number or length of submissions.

(2) The conduct of the hearing by telephone conference call.

(3) A review limited to the written record.

(4) A certification by the parties to facts and legal authorities not in dispute.

(d)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) The designated Department official has the burden of persuasion in any proceeding under this subpart.

(3)(i) The parties may agree to exchange relevant documents and information.

(ii) The ALJ may not order discovery, as provided for under the Federal Rules of Civil Procedure, or any other exchange between the parties of documents or information.

(4) The ALJ accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(e) The ALJ makes a transcribed record of any evidentiary hearing or oral argument that is held, and makes the record available to—

(1) The designated Department official; and

(2) The IHE, SEA, or LEA on its request and upon payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.410 What are the procedures for issuance of a decision?

(a)(1) The ALJ issues a written decision to the IHE, SEA, or LEA, the designated Department official, and the Secretary by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing if one is held; or

(iii) The date on which the ALJ terminates the hearing in accordance with Sec. 86.401(c)(3).

(2) The ALJ's decision states whether the violation or violations contained in the Secretary's notification occurred, and articulates the reasons for the ALJ's finding.

(3) The ALJ bases findings of fact only on evidence in the hearing record and on matters given judicial notice.

(b)(1) The ALJ's decision is the final decision of the agency. However, the Secretary reviews the decision on request

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of either party, and may review the decision on his or her own initiative.

(2) If the Secretary decides to review the decision on his or her own initiative, the Secretary informs the parties of his or her intention to review by written notice sent within 15 days of the Secretary's receipt of the ALJ's decision.

(c)(1) Either party may request review by the Secretary by submitting a brief or written material to the Secretary within 20 days of the party's receipt of the ALJ's decision. The submission must explain why the decision of the ALJ should be modified, reversed, or remanded. The other party shall respond within 20 days of receipt of the brief or written materials filed by the opposing party.

(2) Neither party may introduce new evidence on review.

(d) The decision of the ALJ ordering the repayment of Federal financial assistance or terminating the eligibility of an IHE, SEA, or LEA does not take effect pending the Secretary's review.

(e)(1) The Secretary reviews the ALJ's decision considering only evidence introduced into the record.

(2) The Secretary's decision may affirm, modify, reverse or remand the ALJ's decision and includes a statement of reasons for the decision.

(Authority: 20 U.S.C. 1145g, 3224a)

Sec. 86.411 What are the procedures for requesting reinstatement of eligibility?

(a)(1) An IHE, SEA, or LEA whose eligibility to receive any or all forms of Federal financial assistance has been terminated may file with the Department a request for reinstatement as an eligible entity no earlier than 18 months after the effective date of the termination.

(2) In order to be reinstated, the IHE, SEA, or LEA must demonstrate that it has corrected the violation or violations on which the termination was based and that it has met any repayment obligation imposed upon it under Sec. 86.301(b)(1) of this part.

(b) In addition to the requirements of paragraph (a) of this section, the IHE, SEA, or LEA shall comply with the requirements and procedures for reinstatement of eligibility applicable to any Federal program under which it desires to receive Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

Appendix A

Note: This appendix will not be codified in the Code of Federal Regulations.

This appendix contains a description of Federal trafficking (i.e., distribution) penalties for substances covered by the Controlled Substances Act (21 U.S.C. 811), and is taken from a Department of Justice publication entitled *Drugs of Abuse* (1989 Edition). Persons interested in acquiring the entire publication or in obtaining subsequent editions in the future should contact the Superintendent of Documents, Washington, DC 20402. This appendix also contains a description prepared by the Department of Justice of Federal penalties and sanctions for illegal possession of a controlled substance. Legal sanctions for the unlawful possession or distribution of alcohol are found primarily in State statutes.

The Department of Education is providing this information as an example of the minimum level of information that IHEs may provide to their students and employees in order to comply with the requirements in Sec. 86.100(a)(2) of these regulations relating to the distribution to students and employees of a description of the applicable legal sanctions under Federal law for the unlawful possession or distribution of illicit drugs and alcohol. The Secretary considers this description as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information. In future years, IHEs should distribute the most current editions of these documents that are available.

APPENDIX A

Federal Trafficking Penalties

CSA	PENALTY		Quantity	DRUG	Quantity	PENALTY	
	2nd Offense	1st Offense				1st Offense	2nd Offense
I and II	Not less than 10 years. Not more than life. If death or serious injury, not less than life. Fine of not more than $4 million individual, $10 million other than individual.	Not less than 5 years. Not more than 40 years. If death or serious injury, not less than 20 years. Not more than life. Fine of not more than $2 million individual, $5 million other than individual.	10-99 gm or 100-999 gm mixture	METHAMPHETAMINE	100 gm or more or 1 kg[1] or more mixture	Not less than 10 years. Not more than life. If death or serious injury, not less than 20 years. Not more than life. Fine of not more than $4 million individual. $10 million other than individual.	Not less than 20 years. Not more than life. If death or serious injury, not less than life. Fine of not more than $8 million individual. $20 million other than individual.
			100-999 gm mixture	HEROIN	1 kg or more mixture		
			500-4 999 gm mixture	COCAINE	5 kg or more mixture		
			5-49 gm mixture	COCAINE BASE	50 gm or more mixture		
			0-99 gm or 100-999 gm mixture	PCP	100 gm or more or 1 kg or more mixture		
			1-10 gm mixture	LSD	10 gm or more mixture		
			40-399 gm mixture	FENTANYL	400 gm or more mixture		
			10-99 gm mixture	FENTANYL ANALOGUE	100 gm or more mixture		

CSA	Drug	Quantity	First Offense	Second Offense
	Others[2]	Any	Not more than 20 years. If death or serious injury, not less than 20 years, not more than life. Fine $1 million individual. $5 million not individual.	Not more than 30 years. If death or serious injury, life. Fine $2 million individual. $10 million not individual.
III	All	Any	Not more than 5 years. Fine not more than $250,000 individual. $1 million not individual.	Not more than 10 years. Fine not more than $500,000 individual. $2 million not individual.
IV	All	Any	Not more than 3 years. Fine not more than $250,000 individual. $1 million not individual.	Not more than 6 years. Fine not more than $500,000 individual. $2 million not individual.
V	All	Any	Not more than 1 year. Fine not more than $100,000 individual. $250,000 not individual.	Not more than 2 years. Fine not more than $200,000 individual. $500,000 not individual.

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[1] Law as originally enacted states 100 gm. Congress requested to make technical correction to 1 kg.

[2] Does not include marijuana, hashish, or hash oil. (See separate chart.)

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Federal Trafficking Penalties - Marijuana

As of November 18, 1988

Quantity	Description	First Offense	Second Offense
1,000 kg or more; or 1,000 or more plants	Marijuana Mixture containing detectable quantity*	Not less than 10 years, not more than life. If death or serious injury, not less than 20 years, not more than life. Fine not more than $4 million individual, $10 million other than individual.	Not less than 20 years, not more than life. If death or serious injury, not less than life. Fine not more than $8 million individual, $20 million other than individual.
100 kg to 1,000 kg; or 100-999 plants	Marijuana Mixture containing detectable quantity*	Not less than 5 years, not more than 40 years. If death or serious injury, not less than 20 years, not more than life. Fine not more than $2 million individual, $5 million other than individual.	Not less than 10 years, not more than life. If death or serious injury, not less than life. Fine not more than $4 million individual, $10 million other than individual.
50 to 100 kg	Marijuana	Not more than 20 years. If death or serious injury, not less than 20 years, not more than life. Fine $1 million individual, $5 million other than individual.	Not more than 30 years. If death or serious injury, life. Fine $2 million individual, $10 million other than individual.
10 to 100 kg	Hashish		
1 to 100 kg	Hashish Oil		
50-99 plants	Marijuana		
Less than 50 kg	Marijuana	Not more than 5 years. Fine not more than $250,000, $1 million other than individual.	Not more than 10 years. Fine $500,000 individual, $2 million other than individual.
Less than 10 kg	Hashish		
Less than 1 kg	Hashish Oil		

*Includes Hashish and Hashish Oil

(Marijuana is a Schedule I Controlled Substance)

Federal Penalties and Sanctions for Illegal Possession of a Controlled Substance

21 U.S.C. 844(a)

1st conviction: Up to 1 year imprisonment and fined at least $1,000 but not more than $100,000, or both.

After 1 prior drug conviction: At least 15 days in prison, not to exceed 2 years and fined at least $2,500 but not more than $250,000, or both.

After 2 or more prior drug convictions: At least 90 days in prison, not to exceed 3 years and fined at least $5,000 but not more than $250,000, or both.

Special sentencing provisions for possession of crack cocaine: Mandatory at least 5 years in prison, not to exceed 20 years and fined up to $250,000, or both, if:

(a) 1st conviction and the amount of crack possessed exceeds 5 grams.

(b) 2nd crack conviction and the amount of crack possessed exceeds 3 grams.

(c) 3rd or subsequent crack conviction and the amount of crack possessed exceeds 1 gram.

21 U.S.C. 853(a)(2) and 881(a)(7)

Forfeiture of personal and real property used to possess or to facilitate possession of a controlled substance if that offense is punishable by more than 1 year imprisonment. (See special sentencing provisions re: crack.)

21 U.S.C. 881(a)(4)

Forfeiture of vehicles, boats, aircraft or any other conveyance used to transport or conceal a controlled substance.

21 U.S.C. 844a

Civil fine of up to $10,000 (pending adoption of final regulations).

21 U.S.C. 853a

Denial of Federal benefits, such as student loans, grants, contracts, and professional and commercial licenses, up to 1 year for first offense, up to 5 years for second and subsequent offenses.

18 U.S.C. 922(g)

Ineligible to receive or purchase a firearm.

Miscellaneous

Revocation of certain Federal licenses and benefits, e.g. pilot licenses, public housing tenancy, etc., are vested within the authorities of individual Federal agencies.

Note: These are only Federal penalties and sanctions. Additional State penalties and sanctions may apply.

Appendix B

Note: This appendix will not be codified in the Code of Federal Regulations.

This appendix contains a description of health risks associated with substances covered by the Controlled Substances Act (21 U.S.C. 811), and is taken from a Department of Justice publication entitled *Drugs of Abuse* (1989 Edition). The appendix also includes a summary of health risks associated with alcohol, as described in *What Works: Schools Without Drugs* (1989 Edition), a Department of Education publication.

Persons interested in acquiring the publications or in obtaining subsequent editions in the future should contact the Superintendent of Documents, Washington, DC 20402, for *Drugs of Abuse*; and *Schools Without Drugs*, Pueblo, CO 81009, for *What Works: Schools Without Drugs*.

The Department of Education is providing this information as an example of the minimum level of information that IHEs may provide to their students and employees in order to comply with the requirement in Sec. 86.100(a)(3) of these regulations relating to the distribution of the health risks associated with the use of illicit drugs and the abuse of alcohol. The Secretary considers this information as meeting the requirements of the regulations, but IHEs are not precluded from distributing additional or more detailed information. If an IHE distributes this information in future years, it should use the most current editions of *Drugs of Abuse* and *Schools Without Drugs* that are available.

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Controlled Substances - Uses and Effects

DRUGS CSA SCHEDULES	TRADE OR OTHER NAMES	MEDICAL USES	DEPENDENCE Physical	Psychological	TOLER-ANCE	DURATION (Hours)	USUAL METHODS OF ADMINIS-TRATION	POSSIBLE EFFECTS	EFFECTS OF OVERDOSE	WITHDRAWAL SYNDROME
NARCOTICS										
Opium II III V	Dover's Powder, Paregoric, Parepectolin	Analgesic, Antidiarrheal	High	High	Yes	3-6	Oral, smoked	Euphoria, drowsiness, respiratory depression, constricted pupils, nausea	Slow and shallow breathing, clammy skin, convulsions, coma, possible death	Watery eyes, runny nose, yawning, loss of appetite, irritability, tremors, panic, cramps, nausea, chills, and sweating
Morphine II III	Morphine, MS-Contin, Roxanol, Roxanol-SR	Analgesic, Antitussive	High	High	Yes	3-6	Oral, smoked, injected			
Codeine	Tylenol w/Codeine, Empirin w/Codeine, Robitussan A-C, Fiorinal w/Codeine	Analgesic, Antitussive	Moderate	Moderate	Yes	3-6	Oral, injected			
Heroin I	Diacetylmorphine, Horse, Smack	None	High	High	Yes	3-6	Injected, sniffed, smoked			
Hydromorphone II	Dilaudid	Analgesic	High	High	Yes	3-6	Oral, injected			
Meperidine (Pethidine) II	Demerol, Mepergan	Analgesic	High	High	Yes	3-6	Oral, injected			
Methadone II	Dolophine, Methadone, Methadose	Analgesic	High	High-Low	Yes	12-24	Oral, injected			
Other Narcotics I II III IV V	Numorphan, Percodan, Percocet, Tylox, Tussionex, Fentanyl, Darvon, Lomotil, Talwin[2]	Analgesic, antidiarrheal, antitussive	High-Low	High-Low	Yes	Variable	Oral, injected			
DEPRESSANTS										
Chloral Hydrate IV	Noctec	Hypnotic	Moderate	Moderate	Yes	5-8	Oral	Slurred speech, disorientation, drunken behavior without odor of alcohol	Shallow respiration, clammy skin, dilated pupils, weak and rapid pulse, coma, possible death	Anxiety, insomnia, tremors, delirium, convulsions, possible death
Barbiturates II III IV	Amytal, Butisol, Fiorinal, Lotusate, Nembutal, Seconal, Tuinal, Phenobarbital	Anesthetic, anticonvulsant, sedative, hypnotic, veterinary euthanasic agent	High-Mod.	High-Mod.	Yes	1-16	Oral			
Benzodiazepines IV	Ativan, Dalmane, Diazepam, Librium, Xanax, Serax, Valium, Tranxexe, Verstran, Versed, Halcion, Paxipam, Restoril	Antianxiety, anticonvulsant, sedative, hypnotic	Low	Low	Yes	4-8	Oral			
Methaqualone I	Quaalude	Sedative, hypnotic	High	High	Yes	4-8	Oral			
Glutethimide III	Doriden	Sedative, hypnotic	High	Moderate	Yes	4-8	Oral			
Other Depressants III IV	Equanil, Miltown, Noludar, Placidyl, Valmid	Antianxiety, sedative, hypnotic	Moderate	Moderate	Yes	4-8	Oral			

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Controlled Substances - Uses and Effects

DRUGS CSA SCHEDULES	TRADE OR OTHER NAMES	MEDICAL USES	DEPENDENCE Physical	Psychological	TOLERANCE	DURATION (Hours)	USUAL METHODS OF ADMINISTRATION	POSSIBLE EFFECTS	EFFECTS OF OVERDOSE	WITHDRAWAL SYNDROME
STIMULANTS										
Cocaine[1] II	Coke, Flake, Snow, Crack	Local anesthetic	Possible	High	Yes	1-2	Sniffed, smoked, injected	Increased alertness, excitation, euphoria, increased pulse rate and blood pressure, insomnia, loss of appetite	Agitation, increase in body temperature, hallucinations, convulsions, possible death	Apathy, long periods of sleep, irritability, depression, disorientation
Amphetamines II	Biphetamine, Delcobase, Desoxyn, Dexedrine, Obetrol	Attention deficit disorders, narcolepsy, weight control	Possible	High	Yes	2-4	Oral, injected			
Phenmetrazine II	Preludin	Weight control	Possible	High	Yes	2-4	Oral, injected			
Methylphenidate II	Ritalin	Attention deficit disorders, narcolepsy	Possible	Moderate	Yes	2-4	Oral, injected			
Other Stimulants III IV	Adipex, Cylert, Didrex, Ionamin, Mellat, Plagine, Sanorex, Tenuate, Taperul, Prelu-2	Weight control	Possible	High	Yes	2-4	Oral, injected			
HALLUCINOGENS										
LSD I	Acid, Microdot	None	None	Unknown	Yes	8-12	Oral	Illusions and hallucinations, poor perception of time and distance	Longer, more intense "trip" episodes, psychosis, possible death	Withdrawal syndrome not reported
Mescaline and Peyote I	Mexc, Buttons, Cactus	None	None	Unknown	Yes	8-12	Oral			
Amphetamine Variants I	2,5-DMA, PMA, STP, MDA, MDMA, TMA, DOM, DOB	None	Unknown	Unknown	Yes	Variable	Oral, injected			
Phencyclidine II	PCP, Angel Dust, Hog	None	Unknown	High	Yes	Days	Smoked, oral, injected			
Phencyclidine Analogues I	PCE, PCPy, TCP	None	Unknown	High	Yes	Days	Smoked, oral, injected			
Other Hallucinogens I	Bufoterine, Ibogaine, DMT, DET, Psilocybin, Psilocyn	None	None	Unknown	Possible	Variable	Smoked, oral, injected, sniffed			
CANNABIS										
Marijuana I	Pot, Acapulco Gold, Grass, Reefer, Sinsemilla, Thai Sticks	None	Unknown	Moderate	Yes	2-4	Smoked, oral	Euphoria, relaxed inhibitions, increased appetite, disoriented behavior	Fatigue, paranoia, possible psychosis	Insomnia, hyperactivity, and decreased appetite occasionally reported
Tetrahydrocannabinol I II	THC, Marinol	Cancer chemotherapy, antinauseant	Unknown	Moderate	Yes	2-4	Smoked, oral			
Hashish I	Hash	None	Unknown	Moderate	Yes	2-4	Smoked, oral			
Hashish Oil I	Hash Oil	None	Unknown	Moderate	Yes	2-4	Smoked, oral			

[1] Designated a narcotic under the GSA

[2] Not designated a narcotic under the GSA

APPENDIX B

Alcohol

Effects

Alcohol consumption causes a number of marked changes in behavior. Even low doses significantly impair the judgement and coordination required to drive a car safely, increasing the likelihood that the driver will be involved in an accident. Low to moderate doses of alcohol also increase the incidence of a variety of aggressive acts, including spouse and child abuse. Moderate to high doses of alcohol cause marked impairments in higher mental functions, severely altering a person's ability to learn and remember information. Very high doses cause respiratory depression and death. If combined with other depressants of the central nervous system, much lower doses of alcohol will produce the effects just described.

Repeated use of alcohol can lead to dependence. Sudden cessation of alcohol intake is likely to produce withdrawal symptoms, including severe anxiety, tremors, hallucinations, and convulsions. Alcohol withdrawal can be life-threatening. Long-term consumption of large quantities of alcohol, particularly when combined with poor nutrition, can also lead to permanent damage to vital organs such as the brain and the liver.

Mothers who drink alcohol during pregnancy may give birth to infants with fetal alcohol syndrome. These infants have irreversible physical abnormalities and mental retardation. In addition, research indicates that children of alcoholic parents are at greater risk than other youngsters of becoming alcoholics.

PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A--General

Sec.

99.1 To which educational agencies or institutions do these regulations apply?

99.2 What is the purpose of these regulations?

99.3 What definitions apply to these regulations?

99.4 What are the rights of parents?

99.5 What are the rights of students?

99.6 [Removed and reserved]

99.7 What must an educational agency or institution include in its annual notification?

99.8 What provisions apply to records of a law enforcement unit?

Subpart B--What are the Rights of Inspection and Review of Education Records?

99.10 What rights exist for a parent or eligible student to inspect and review education records?

99.11 May an educational agency or institution charge a fee for copies of education records?

99.12 What limitations exist on the right to inspect and review records?

Subpart C--What are the Procedures for Amending Education Records?

99.20 How can a parent or eligible student request amendment of the student's education records?

99.21 Under what conditions does a parent or eligible student have the right to a hearing?

99.22 What minimum requirements exist for the conduct of a hearing?

Subpart D--May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

99.30 Under what conditions is prior consent required to disclose information?

99.31 Under what conditions is prior consent not required to disclose information?

99.32 What recordkeeping requirements exist concerning requests and disclosures?

99.33 What limitations apply to the redisclosure of information?

99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

99.35 What conditions apply to disclosure of information for Federal or State program purposes?

99.36 What conditions apply to disclosure of information in health and safety emergencies?

99.37 What conditions apply to disclosing directory information?

99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

Subpart E--What are the Enforcement Procedures?

99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

99.62 What information must an educational agency or institution submit to the Office?

99.63 Where are complaints filed?

99.64 What is the complaint procedure?

99.65 What is the content of the notice of complaint issued by the Office?

99.66 What are the responsibilities of the Office in the enforcement process?

99.67 How does the Secretary enforce decisions?

Appendix

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PART 99--FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A--General

Sec. 99.1 To which educational agencies or institutions do these regulations apply?

(a) Except as otherwise noted in Sec. 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if--

(1) The educational institution provides educational services or instruction, or both, to students; or

(2) The educational agency provides administrative control of or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.

(b) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(c) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section--

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

Note: (a) revised, (b) removed, (c), (d) and (e) redesignated (b), (c), and (d), respectively, November 21, 1996, effective December 23, 1996.

Sec. 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

Note: Section revised November 21, 1996, effective December 23, 1996.

Sec. 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to--

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under Sec. 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) The term means those records that are--

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Sec. 99.8.

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that--

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are—

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to--

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

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"Student", except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

Note: Section amended January 17, 1995, effective March 3, 1995. Definitions of "Act," "Disclosure," and "Record" revised November 2, 1996, effective December 23, 1996.

Sec. 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

Sec. 99.5 What are the rights of students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

Note: Heading amended January 7, 1993, effective February 25, 1993.

Sec. 99.6 [Removed and reserved]

Note: Section removed and reserved November 21, 1996, effective December 23, 1996

Sec. 99.7 What must an educational agency or institution include in its annual notification?

(a)(1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.

(2) The notice must inform parents or eligible students that they have the right to--

(i) Inspect and review the student's education records;

(ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

(iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and Sec. 99.31 authorize disclosure without consent; and

(iv) File with the Department a complaint under Secs. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.

(3) The notice must include all of the following:

(i) The procedure for exercising the right to inspect and review education records.

(ii) The procedure for requesting amendment of records under Sec. 99.20.

(iii) If the educational agency or institution has a policy of disclosing education records under Sec. 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

(b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

(1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.

(2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g (e) and (f)).

Note: Section revised November 21, 1996, effective December 23, 1996.

Sec. 99.8 What provisions apply to records of a law enforcement unit?

(a)(1) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to--

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a *law enforcement unit* if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1) Records of a law enforcement unit means those records, files, documents, and other materials that are--

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean--

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of Sec. 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g(a)(4)(B)(ii))

Note: Section added January 17, 1995, effective March 3, 1995.

Subpart B--What are the Rights of Inspection and Review of Education Records?

Sec. 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under Sec. 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to--

(1) Any educational agency or institution; and

(2) Any State educational agency (SEA) and its components.

(i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.

(ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.

(b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

(c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall--

(1) Provide the parent or eligible student with a copy of the records requested; or

(2) Make other arrangements for the parent or eligible student to inspect and review the requested records.

(e) The educational agency or institution, or SEA or its component shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Sec. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

Note: (a), (b),(c), (d), (e), and the authority citation revised November 21, 1996, effective December 23, 1996.

Sec. 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

Sec. 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are--

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if--

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's--

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if--

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall--

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A), (B), (C), and (D))

Note: (a) and authority citation revised November 21, 1996, effective December 23, 1996.

Subpart C--What are the Procedures for Amending Education Records?

Sec. 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) if the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Sec. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

Note: (a) revised November 21, 1996, effective December 23, 1996.

Sec. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall--

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall--

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

Note: (a), (b)(1) introductory text, and (b)(2) revised November 21, 1996, effective December 23, 1996.

Sec. 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Sec. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Sec. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D--May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

Sec. 99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in Sec. 99.31.

(b) The written consent must--

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section--

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

Note: Heading and (a) amended January 7, 1993, effective February 25, 1993.

Sec. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of Sec. 99.35, to authorized representatives of--

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to--

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically--

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of Sec. 99.38.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to--

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if--

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(iv) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with--

(A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

(B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(iii) If the educational agency or institution initiates legal action against a parent or student and has complied with paragraph (a)(9)(ii) of this section, it may disclose the student's education records that are relevant to the action to the court without a court order or subpoena.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Sec. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in Sec. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2), (b)(4)(B), and (f)).

Note: (b) and authority citation amended and (a)(13) added January 7, 1993, effective February 25, 1993. (a)(6)(iii) redesignated as (a)(6)(iv) and new (a)(6)(iii) added; (a)(5)(i); (a)(9); and authority citation revised November 21, 1996, effective December 23, 1996.

Sec. 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include--

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Sec. 99.33(b), the record of the disclosure required under this section must include--

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Sec. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Sec. 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to--

(1) The parent or eligible student;

(2) A school official under Sec. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student;

(4) A party seeking directory information; or

(5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(Approved by the Office of Management and Budget under control number 1880-0508)

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(4)(A))

Note: (d)(5) added and the authority citation revised November 21, 1996, effective December 23, 1996.

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Sec. 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if--

(1) The disclosures meet the requirements of Sec. 99.31; and

(2) The educational agency or institution has complied with the requirements of Sec. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under Sec. 99.31(a)(9), to disclosures of directory information under Sec. 99.31(a)(11), or to disclosures to a parent or student under Sec. 99.31(a)(12).

(d) Except for disclosures under Sec. 99.31(a) (9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of Sec. 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

Note: (c) and (d) revised and (e) added November 21, 1996, effective December 23, 1996.

Sec. 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under Sec. 99.31(a)(2) shall--

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless--

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The annual notification of the agency or institution under Sec. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if--

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

Note: (a)(1)(ii) revised November 21, 1996, effective December 23, 1996.

Sec. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in Sec. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must--

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if--

(1) The parent or eligible student has given written consent for the disclosure under Sec. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

Sec. 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from--

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) Paragraphs (a) and (b) of this section will be strictly construed.

(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))

Note: (b) and the authority citation revised and (c) added November 21, 1996, effective December 23, 1996.

Sec. 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of--

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

Sec. 99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Sec. 99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

(Authority: 20 U.S.C. 1232g(b)(1)(J))

Note: Section added November 21, 1996, effective December 23, 1996.

Subpart E--What are the Enforcement Procedures?

Sec. 99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

(b) The Secretary designates the Office to--

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

Note: Heading and paragraphs (a) and (c) amended January 7, 1993, effective February 25, 1993.

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Sec. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

Sec. 99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S.Department of Education, Washington, D.C. 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

Note: Amended January 7, 1993, effective February 25, 1993. Amended November 21, 1996, effective December 23, 1996.

Sec. 99.64 What is the complaint procedure?

(a) A complaint filed under Sec. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

(Authority: 20 U.S.C. 1232g(f))

Note: (c) and (d) added January 7, 1993, effective February 25, 1993.

Sec. 99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under Sec. 99.64(b). The notice to the educational agency or institution--

(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of Sec. 99.64.

(Authority: 20 U.S.C. 1232g(g))

Note: Amended January 7, 1993, effective February 25, 1993.

Sec. 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section--

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

Sec. 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under Sec. 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act--

(1) Withhold further payments under any applicable program;

(2) Issue a compliant to compel compliance through a

cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(b) If, after an investigation under Sec. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)

Note: (a) and authority citation amended January 7, 1993, effective February 25, 1993.

Appendix

Note: Appendix from final rule of November 21, 1996, effective December 23, 1996.

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Model Notification of Rights Under FERPA for Elementary and Secondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. They are:

(1) The right to inspect and review the student's education records within 45 days of the day the District receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

(2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading.

Parents or eligible students may ask Alpha School District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. [Note: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-4605

[Note: In addition, a school may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]

Model Notification of Rights Under FERPA for Postsecondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. They are:

(1) The right to inspect and review the student's

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education records within 45 days of the day the University receives a request for access.

Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. The University official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

(2) The right to request the amendment of the student's education records that the student believes are inaccurate or misleading.

Students may ask the University to amend a record that they believe is inaccurate or misleading. They should write the University official responsible for the record, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the University decides not to amend the record as requested by the student, the University will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the University discloses education records without consent to officials of another school, upon request, in which a student seeks or intends to enroll. [Note: FERPA requires an institution to make a reasonable attempt to notify the student of the records request unless the institution states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by State University to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC, 20202-4605

[Note: In addition, an institution may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]

PART 600--INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Subpart A--General

Sec.

600.1 Scope.

600.2 Definitions.

600.3 [Reserved].

600.4 Institution of higher education.

600.5 Proprietary institution of higher education.

600.6 Postsecondary vocational institution.

600.7 Conditions of institutional ineligibility.

600.8 Treatment of a branch campus.

600.9 Written agreement between an eligible institution and another institution or organization.

600.10 Date, extent, duration, and consequence of eligibility.

600.11 Special rules regarding institutional accreditation or preaccreditation.

Subpart B--Procedures for Establishing Eligibility

600.20 Application procedures.

600.21 Eligibility notification.

Subpart C--Maintaining Eligibility

600.30 Institutional notification requirements.

600.31 Change in ownership resulting in a change of control.

600.32 Eligibility of additional locations.

Subpart D--Loss of Eligibility

600.40 Loss of eligibility.

600.41 Termination and emergency action proceedings.

Subpart E--Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

600.51 Purpose and scope.

600.52 Definitions.

600.53 Requesting an eligibility determination.

600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs.

600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

600.56 Duration of eligibility determination.

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b, 1099c, and 1141, unless otherwise noted.

Subpart A--General

Sec. 600.1 Scope.

This part establishes the rules and procedures that the Secretary uses to determine whether an educational institution qualifies in whole or in part as an eligible institution of higher education under the Higher Education Act of 1965, as amended (HEA). An eligible institution of higher education may apply to participate in programs authorized by the HEA (HEA programs).

(Authority: 20 U.S.C. 1088, 1094, 1099b, 1099c, and 1141)

Sec. 600.2 Definitions.

The following definitions apply to terms used in this part:

Accredited: The status of public recognition that a nationally recognized accrediting agency grants to an institution or educational program that meets the agency's established requirements.

Award year: The period of time from July 1 of one year through June 30 of the following year.

Branch Campus: A location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location--

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(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

Clock hour: A period of time consisting of--

(1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;

(2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or

(3) Sixty minutes of preparation in a correspondence course.

Correspondence course: (1) A "home-study" course provided by an institution under which the institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution. When students complete a portion of the instructional materials, the students take the examinations that relate to that portion of the materials, and return the examinations to the institution for grading.

(2) A home-study course that provides instruction in whole or in part through the use of video cassettes or video discs in an award year is a correspondence course unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at the institution during the same award year.

(3) A course at an institution that may otherwise satisfy the definition of a "telecommunications course" is a correspondence course if the sum of telecommunications and other correspondence courses offered by that institution equals or exceeds 50 percent of the total courses offered at that institution.

(4) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

Educational program: A legally authorized postsecondary program of organized instruction or study that leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential. However, the Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study), but merely gives credit for one or more of the following: instruction provided by other institutions or schools; examinations provided by agencies or organizations; or other accomplishments such as "life experience."

Eligible institution: An institution that--

(1) Qualifies as--

(i) An institution of higher education, as defined in Sec. 600.4;

(ii) A proprietary institution of higher education, as defined in Sec. 600.5; or

(iii) A postsecondary vocational institution, as defined in Sec. 600.6; and

(2) Meets all the other applicable provisions of this part.

Federal Family Education Loan (FFEL) programs: The loan programs (formerly called the Guaranteed Student Loan (GSL) programs) authorized by title IV-B of the HEA, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (Federal SLS), and Federal Consolidation Loan programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the students' attendance at eligible institutions. The Federal Stafford Loan, Federal PLUS, Federal SLS, and Federal Consolidation Loan programs are defined in 34 CFR part 668.

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency: An agency or association that the Secretary recognizes as a reliable authority to determine the quality of education or training offered by an institution or a program offered by an institution. The Secretary recognizes these agencies and associations under the provisions of 34 CFR part 602 and publishes a list of the recognized agencies in the **Federal Register**.

Nonprofit institution: An institution that--

(1) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(2) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(3) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

One-academic-year training program: An educational program that is at least one academic year as defined under 34 CFR 668.2.

Preaccredited: A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

Recognized equivalent of a high school diploma: The following are the equivalent of a high school diploma--

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

Recognized occupation: An occupation that is--

(1) Listed in an "occupational division" of the latest edition of the Dictionary of Occupational Titles, published by the U.S. Department of Labor; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Telecommunications course: A course offered in an award year principally through the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs. The term does not include a course that is delivered using video cassettes or disc recordings unless that course is delivered to students physically attending classes at an institution providing the course during the same award year. If the course does not qualify as a telecommunications course it is considered to be a correspondence course, as provided for in paragraph (c) of the definition of correspondence course in this section.

Title IV, HEA program: Any of the student financial assistance programs listed in 34 CFR 668.1(c).

(Authority: 20 U.S.C. 1071 et seq., 1078-2, 1088, 1099b, 1099c, and 1141 and 26 U.S.C. 501(c).)

Sec. 600.3 [Reserved]

Sec. 600.4 Institution of higher education.

(a) An institution of higher education is a public or private nonprofit educational institution that--

(1) Is in a State, or for purposes of the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and Federal TRIO programs may also be located in the Federated States of Micronesia or the Marshall Islands;

(2) Admits as regular students only persons who--

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides an educational program--

(i) For which it awards an associate, baccalaureate, graduate, or professional degree;

(ii) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or

(iii) That is at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation; and

(5) Is--

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the **Federal Register** in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal student assistance programs.

(b) An institution is physically located in a State if it has a campus or other instructional site in that State.

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to binding arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1094, 1099b, and 1141(a))

600.5 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution that--

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who--

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(5) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation;

(6) Is accredited;

(7) Has been in existence for at least two years; and

(8) Has no more than 85 percent of its revenues derived from title IV, HEA program funds, as determined under paragraph (d) of this section.

(b)(1) The Secretary considers an institution to have been in existence for two years only if--

(i) The institution has been legally authorized to provide, and has provided, a continuous educational program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application; and

(ii) The educational program that the institution provides on the date of its eligibility application is substantially the same in length and subject matter as the program that the institution provided during the 24 months preceding the date of its eligibility application.

(2)(i) The Secretary considers an institution to have provided a continuous educational program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that directly affected the institution or the institution's students.

(ii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary--

(i) Counts any period during which the applicant institution qualified as a branch campus; and

(ii) Except as provided in paragraph (b)(3)(i) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(c) An institution is physically located in a State if it has a campus or other instructional site in that State.

(d)(1) An institution satisfies the requirement contained in paragraph (a)(8) of this section by examining its revenues under the following formula:

$$\frac{\text{Title IV, HEA program funds the institution used to satisfy tuition, fees, and other institutional charges to students.}}{\text{The sum of revenues generated by the institution from: Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in 34 CFR 668.8; and activities conducted by the institution, to the extent not included in tuition, fees, and other institutional charges, that are necessary for the education or training of its students who are enrolled in those eligible programs.}}$$

(2) Under the fraction contained in paragraph (d)(1) of this section--

(i) Except as provided in paragraph (h) of this section, the title IV, HEA program funds included in the numerator and the revenue included in the denominator are the amount of title IV, HEA program funds and revenues received by the institution during the institution's last complete fiscal year;

(ii) The title IV, HEA program funds included in the numerator do not include State Student Incentive Grant (SSIG) or Federal Work-Study (FWS) program funds. (The SSIG and FWS programs are defined in 34 CFR 668.2);

(iii) The title IV, HEA program funds included the numerator and revenue included the denominator do not include any refunds paid to or on behalf of students under the institution's refund policy;

(iv) The amount charged for books, supplies, and equipment is not included in the numerator or the denominator unless the amount is included in tuition, fees, or other institutional charges;

(v) With regard to the numerator, any title IV, HEA program funds disbursed or delivered to or on behalf of a student shall be presumed to be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except for tuition, fees, and other institutional charges that were satisfied by--

(A) Grant funds provided by non-Federal public agencies, or private sources independent of the institution; or

(B) Funds provided under a contractual arrangement described in Sec. 600.7(d); and

(vi) With regard to the denominator, revenue generated by the institution from other activities conducted by the institution that are necessary for its students' education or training includes only revenue for those activities that--

(A) Are conducted on campus or at a facility under the control of the institution;

(B) Are performed under the supervision of a member of the institution's faculty; and

(C) Are required to be performed by all students in a specific educational program at the institution.

(e) removed and reserved

(f) Except as provided in paragraph (h) of this section, an institution shall notify the Secretary if it fails to satisfy the requirement contained in paragraph (a)(8) of this section within 90 days following the end of the fiscal year used in paragraph (d)(1) of this section.

(g) If an institution loses its eligibility because it failed to satisfy the requirement contained in paragraph (a)(8) of this section, to regain its eligibility it must demonstrate compliance with all eligibility requirements for at least the fiscal year following the fiscal year used in paragraph (d)(1) of this section.

(h) Special provisions for the 1994-95 award year. As of July 1, 1994:

(1) If an institution's latest complete fiscal year ended during the period of October 1, 1993 through June 30, 1994, an institution shall use that fiscal year in paragraph (d)(1) of this section to determine whether the institution satisfies the requirement contained in paragraph (a)(8) of this section.

(2) If an institution's latest complete fiscal year ended before October 1, 1993, the institution shall use as its latest fiscal year in paragraph (d)(1) of this section the fiscal year that ends between July 1, 1994 and September 30, 1994 to determine whether the institution satisfies the requirement contained in paragraph (a)(8) of this section.

(3) If an institution uses the fiscal year described in paragraph (h)(1) of this section as its latest fiscal year under paragraph (d)(1) of this section, the institution shall notify the Secretary by September 30, 1994 if it fails to satisfy the requirement contained in paragraph (a)(8) of this section.

(4) If an institution uses the fiscal year described in paragraph (h)(2) of this section as its latest fiscal year under paragraph (d)(1) of this section, the institution shall notify the

Secretary if it fails to satisfy the requirement contained in paragraph (a)(8) of this section within 90 days following the end of that fiscal year.

(i) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to binding arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1088)

(Approved by the Office of Management and Budget under control number 1840-0098)

Note: (e)(1), (e)(2), and (e)(3) amended June 22, 1994, effective July 1, 1994. (e) revised June 12, 1996, effective July 12, 1996. (e) removed and reserved November 29, 1996, effective July 1, 1997.

Sec. 600.6 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private nonprofit educational institution that--

(1) Is in a State;

(2) Admits as regular students only persons who--

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation;

(5) Is--

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the **Federal Register** in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal assistance programs; and

(6) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if--

(i) The institution has been legally authorized to provide, and has provided, a continuous education or training program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application; and

(ii) The education or training program it provides on the date of its eligibility application is substantially the same in length and subject matter as the program it provided during the 24 months preceding the date of its eligibility application.

(2)(i) The Secretary considers an institution to have provided a continuous education or training program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that affected the institution or the institution's students.

(ii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary--

(i) Counts any period during which the applicant institution qualified as an eligible institution of higher education;

(ii) Counts any period during which the applicant institution was part of another eligible institution of higher education, provided that the applicant institution continues to be part of an eligible institution of higher education;

(iii) Counts any period during which the applicant institution qualified as a branch campus; and

(iv) Except as provided in paragraph (b)(3)(iii) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education or postsecondary vocational institution.

(c) An institution is physically located in a State or other instructional site if it has a campus or instructional site in that State.

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to binding arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1088 and 1094(c)(3))

Sec. 600.7 Conditions of institutional ineligibility.

(a) General rule. For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in Secs. 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if--

(1) For its latest complete award year--

(i) More than 50 percent of the institution's courses were correspondence courses as calculated under paragraph (b) of this section;

(ii) Fifty percent or more of the institution's regular enrolled students were enrolled in correspondence courses;

(iii) Twenty-five percent or more of the institution's regular enrolled students were incarcerated;

(iv) Fifty percent or more of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively;

(2) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution--

(A) Files for relief in bankruptcy, or

(B) Has entered against it an order for relief in bankruptcy; or

(3) The institution, its owner, or its chief executive officer--

(i) Has pled guilty to, has pled nolo contendere to, or is found guilty of, a crime involving the acquisition, use, or expenditure of title IV, HEA program funds; or

(ii) Has been judicially determined to have committed fraud involving title IV, HEA program funds.

(b) *Special provisions regarding correspondence courses and students*--(1) *Treatment of telecommunications courses.* For purposes of paragraphs (a)(1) (i) and (ii) of this section, the Secretary considers a telecommunications course to be a correspondence course if the sum of telecommunications courses and other correspondence courses the institution provided during that award year equaled or exceeded 50 percent of the total number of courses it provided during that year.

(2) *Calculating the number of courses.* For purposes of paragraphs (a)(1) (i) and (ii) of this section--

(i) A correspondence course may be a complete educational program offered by correspondence, or one course provided by correspondence in an on-campus (residential) educational program;

(ii) A course must be considered as being offered once during an award year regardless of the number of times it is offered during that year; and

(iii) A course that is offered both on campus and by correspondence must be considered two courses for the purpose of determining the total number of courses the institution provided during an award year.

(3) *Exceptions.* (i) The provisions contained in paragraphs (a)(1) (i) and (ii) of this section do not apply to an institution that qualifies as a "technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market" under section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act.

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor's-degree program if the students enrolled in the institution's correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students at that institution.

(c) *Special provisions regarding incarcerated students*--(1) *Exception.* The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards bachelor's or associate degrees, respectively.

(2) If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it offers bachelor's or associate degrees, respectively, or both types of programs, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational

programs for which it offers bachelor's or associate degrees, respectively, or both types of programs, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section--

(i) For the four-year and two-year programs that lead, respectively, to bachelor's and associate degrees; and

(ii) For the other programs the institution offers, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

(d) *Special provision for a nonprofit institution if more than 50 percent of its enrollment consists of students who do not have a high school diploma or its equivalent.* (1) Subject to the provisions contained in paragraphs (d)(2) and (d)(3) of this section, the Secretary waives the limitation contained in paragraph (a)(1)(iv) of this section for a nonprofit institution if that institution demonstrates to the Secretary's satisfaction that it exceeds that limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent.

(2) *Number of critical students.* The Secretary grants a waiver under paragraph (d)(1) of this section only if no more than 40 percent of the institution's enrollment of regular students consists of students who--

(i) Do not have a high school diploma or its equivalent; and

(ii) Are not served through contracts described in paragraph (d)(3) of this section.

(3) *Contracts with Federal, State, or local government agencies.* For purposes of granting a waiver under paragraph (d)(1) of this section, the contracts referred to must be with Federal, State, or local government agencies for the purpose of providing job training to low-income individuals who are in need of that training. An example of such a contract is a job training contract under the Job Training Partnership Act (JPTA).

(e) *Special provisions.* (1) For purposes of paragraph (a)(1)of this section, when counting regular students, the institution shall--

(i) Count each regular student without regard to the full-time or part-time nature of the student's attendance (i.e., "head count" rather than "full-time equivalent");

(ii) Count a regular student once regardless of the number of times the student enrolls during an award year; and

(iii) Determine the number of regular students who enrolled in the institution during the relevant award year by--

(A) Calculating the number of regular students who enrolled during that award year; and

(B) Excluding from the number of students in paragraph (e)(1)(iii)(A) of this section, the number of regular students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100-percent refund of their tuition and fees less any administrative fee that the institution is permitted to keep under its fair and equitable refund policy.

(2) For the purpose of calculating a completion rate under paragraph (c)(3)(ii) of this section, the institution shall--

(i) Determine the number of regular incarcerated students who enrolled in the other programs during the last completed award year;

(ii) Exclude from the number of regular incarcerated students determined in paragraph (e)(2)(i) of this section, the number of those students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees, less any administrative fee the institution is permitted to keep under the institution's fair and equitable refund policy;

(iii) Exclude from the total obtained in paragraph (e)(2)(ii) of this section, the number of those regular incarcerated students who remained enrolled in the programs at the end of the applicable award year;

(iv) From the total obtained in paragraph (e)(2)(iii) of this section, determine the number of regular incarcerated students who received a degree, certificate, or other recognized educational credential awarded for successfully completing the program during the applicable award year; and

(v) Divide the total obtained in paragraph (e)(2)(iv) of this section by the total obtained in paragraph (e)(2)(iii) of this section and multiply by 100.

(f)(1) If the Secretary grants a waiver to an institution under this section, the waiver extends indefinitely provided that the institution satisfies the waiver requirements in each award year.

(2) If an institution fails to satisfy the waiver requirements for an award year, the institution becomes ineligible on June 30 of that award year.

(g)(1) For purposes of paragraph (a)(1) of this section, and any applicable waiver or exception under this section, the institution shall substantiate the required calculations by having the certified public accountant who prepares its audited financial statement under 34 CFR 668.15 or its title IV, HEA program compliance audit under 34 CFR 668.23 report on the accuracy of those determinations.

(2) The certified public accountant's report must be based on performing an "attestation engagement" in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements. The certified public accountant shall include that attestation report with or as part of the audit report referenced in paragraph (g)(1) of this section.

(3) The certified public accountant's attestation report must indicate whether the institution's determinations regarding paragraph (a)(1) of this section and any relevant waiver or exception under paragraphs (b), (c), and (d) of this section are accurate; i.e., fairly presented in all material respects.

(h) *Notice to the Secretary*. An institution shall notify the Secretary--

(1) By July 31 following the end of an award year if it falls within one of the prohibitions contained in paragraph (a)(1)of this section, or fails to continue to satisfy a waiver or exception granted under this section; or

(2) Within 10 days if it falls within one of the prohibitions contained in paragraphs (a)(2) or (a)(3) of this section.

(i) *Regaining eligibility*. (1) If an institution loses its eligibility because of one of the prohibitions contained in paragraph (a)(1) of this section, to regain its eligibility, it must demonstrate--

(i) Compliance with all eligibility requirements;

(ii) That it did not fall within any of the prohibitions contained in paragraph (a)(1) of this section for at least one award year; and

(iii) That it changed its administrative policies and practices to ensure that it will not fall within any of the prohibitions contained in paragraph (a)(1) of this section.

(2) If an institution loses its eligibility because of one of the prohibitions contained in paragraphs (a)(2) and (a)(3) of this section, this loss is permanent. The institution's eligibility cannot be reinstated.

(Authority: 20 U.S.C. 1088)

(Approved by the Office of Management and Budget under control number 1840-0098)

Note: (e)(2), (g)(1), (g)(2), and (g)(3) amended June 22, 1994, effective July 1, 1994. (a) introductory text, (a)(1) introductory text, (a)(1)(iv), and (a)(2) amended June 30, 1995, effective July 31, 1995.

Sec. 600.8 Treatment of a branch campus.

A branch campus of an eligible institution must be in existence for at least two years as a branch campus before seeking to be designated as a main campus or a free-standing institution.

(Authority: 20 U.S.C. 1099c)

Sec. 600.9 Written agreement between an eligible institution and another institution or organization.

(a) Without losing its eligibility under this part, an eligible institution may enter into a written agreement with another eligible institution under which the latter institution provides all or a part of the educational program of students enrolled in the former institution if the former institution gives credit to students enrolled in that contracted program on the same basis as if it provided that program itself.

(b) Without losing its eligibility under this part, an eligible institution may enter into a written agreement with an institution or organization that is not an eligible institution under which the latter institution or organization provides a part of the educational program of students enrolled in the eligible institution if--

(1) The eligible institution gives credit to students enrolled in that contracted program on the same basis as if it provided that program itself;

(2) The ineligible institution or organization--

(i) Has not been terminated from participation in the title-IV, HEA programs; or

(ii) Has not withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or SPRE, or by the Secretary; and

(3) The ineligible institution or organization provides--

(i) Not more than 25 percent of the educational program of a student enrolled in the eligible institution; or

(ii) More than 25 percent but not more than 50 percent of the educational program of a student enrolled in the eligible institution so long as--

(A) The eligible institution and the ineligible institution

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or organization are not owned or controlled by the same individual, partnership, or corporation; and

(B) The eligible institution's accrediting agency or, if the eligible institution is a public postsecondary vocational educational institution, the relevant State agency listed in the **Federal Register** in accordance with 34 CFR part 603, specifically determines that the institution's agreement meets the agency's standards for the contracting out of educational services.

(Authority: 20 U.S.C. 1094)

Sec. 600.10 Date, extent, duration, and consequence of eligibility.

(a) *Date of eligibility.* (1) If the Secretary determines that an applicant institution satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution to be an eligible institution as of the date--

(i) The Secretary signs the institution's program participation agreement described in 34 CFR part 668, subpart B, for purposes of participating in any title IV, HEA program; and

(ii) The Secretary receives all the information necessary to make that determination for purposes other than participating in any title IV, HEA program.

(2) For purposes of participating in a title IV, HEA program, if an eligible institution seeks eligibility for a location or educational program not previously designated eligible, and the Secretary determines that the location or educational program satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the location or program to be eligible to participate in that title IV, HEA program as of the date the Secretary certifies that location or program to so participate.

(b) *Extent of eligibility.* (1) If the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this part, the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility.

(2) If the Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements of this part, the Secretary extends eligibility only to those educational programs and locations that meet those requirements and identifies the eligible educational programs and locations in the eligibility notice sent to the institution under Sec. 600.21.

(3) Eligibility does not extend to any location that an institution establishes after it receives its eligibility designation if the institution provides at least 50 percent of an educational program at that location, unless--

(i) The institution has notified the Secretary of that location in accordance with Sec. 600.30(a)(3); and

(ii) The Secretary does not require the institution to submit an eligibility application for that location under Sec. 600.21(c).

(c) *Subsequent additions of educational programs.* (1) Except as provided in paragraph (c)(2) of this section, if an eligible institution adds an educational program after it has been designated as an eligible institution by the Secretary, the institution must apply to the Secretary to have that additional program designated as an eligible program of that institution.

(2) An eligible institution that adds an educational program after it has been designated as an eligible institution by the Secretary does not have to apply to the Secretary to have that additional program designated as an eligible program of that institution if the additional program--

(i) Leads to an associate, baccalaureate, professional, or graduate degree; or

(ii)(A) Prepares students for gainful employment in the same or related recognized occupation as an educational program that has previously been designated as an eligible program at that institution by the Secretary; and

(B) Is at least 8 semester hours, 12 quarter hours, or 600 clock hours.

(3) If an institution incorrectly determines under paragraph (c)(2) of this section that an educational program satisfies the applicable statutory and regulatory eligibility provisions without applying to the Secretary for approval, the institution is liable to repay to the Secretary all HEA program funds received by the institution for that educational program, and all the title IV, HEA program funds received by or on behalf of students who were enrolled in that educational program.

(d) *Duration of eligibility.* (1) If an institution participates in the title IV, HEA programs, the Secretary's designation of the institution as an eligible institution under the title IV, HEA programs expires when the institution's program participation agreement, as described in 34 CFR part 668, subpart B, expires.

(2) If an institution participates in an HEA program other than a title IV, HEA program, the Secretary's designation of the institution as an eligible institution, for purposes of that non-title IV, HEA program, does not expire as long as the institution continues to satisfy the statutory and regulatory requirements governing its eligibility.

(e) *Consequence of eligibility.* (1) If, as a part of its institutional eligibility application, an institution indicates that it wishes to participate in a title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the Secretary will determine whether the institution satisfies the standards of administrative capability and financial responsibility contained in 34 CFR part 668, subpart B.

(2) If, as part of its institutional eligibility application, an institution indicates that it does not wish to participate in any title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the institution is eligible to apply to participate in any HEA program listed by the Secretary in the eligibility notice it receives under Sec. 600.21. However, the institution is not eligible to participate in those programs, or receive funds under those programs, merely by virtue of its designation as an eligible institution under this part.

(Authority: 20 U.S.C. 1088 and 1141)

(Approved by the Office of Management and Budget under control number 1840-0098)

Sec. 600.11 Special rules regarding institutional accreditation or preaccreditation.

(a) *Change of accrediting agencies.* For purposes of Secs. 600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides to the Secretary--

(1) All materials related to its prior accreditation or preaccreditation; and

(2) Materials demonstrating reasonable cause for changing its accrediting agency.

(b) *Multiple accreditation.* The Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is accredited or preaccredited as an institution by more than one accrediting agency, unless the institution--

(1) Provides to each such accrediting agency and the Secretary the reasons for that multiple accreditation or preaccreditation;

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation; and

(3) Designates to the Secretary which agency's accreditation or preaccreditation the institution uses to establish its eligibility under this part.

(c) *Loss of accreditation or preaccreditation.* (1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

(d) *Religious exception.* (1) If an otherwise eligible institution loses its accreditation or preaccreditation, the Secretary considers the institution to be accredited or preaccredited for purposes of complying with the provisions of Secs. 600.4, 600.5, and 600.6 if the Secretary determines that its loss of accreditation or preaccreditation--

(i) Is related to the religious mission or affiliation of the institution; and

(ii) Is not related to its failure to satisfy the accrediting agency's standards.

(2) If the Secretary considers an unaccredited institution to be accredited or preaccredited under the provisions of paragraph (d)(1) of this section, the Secretary will consider that unaccredited institution to be accredited or preaccredited for a period sufficient to allow the institution to obtain alternative accreditation or preaccreditation, except that period may not exceed 18 months.

(Authority: 20 U.S.C. 1099b)

Subpart B--Procedures for Establishing Eligibility

Sec. 600.20 Application procedures.

(a) An institution that wishes to establish its eligibility to apply to participate in any program authorized by the HEA must first apply to the Secretary for a determination that it qualifies as an eligible institution.

(b) A previously designated eligible institution must apply to the Secretary if--

(1) The Secretary requests the institution to file an application so as to determine whether it continues to meet the requirements of this part; or

(2) The institution satisfies one of the conditions contained in paragraph (c) of this section.

(c) An institution must apply if it wishes to--

(1) Continue to be eligible beyond the scheduled expiration of its current eligibility designation;

(2) Include in its eligibility designation a branch campus that is not currently included in that designation;

(3) Include in its eligibility designation a location that is not currently included in that designation, if--

(i) The institution offers 100 percent of an educational program at that location; or

(ii) The institution offers at least 50 percent of an educational program at that location, and the Secretary requires the institution to apply for eligibility under Sec. 600.21(c)(2);

(4) Continue to be eligible following a change in its name, location, or address;

(5) Continue to include in its eligibility designation a branch campus that has changed its name, location, or address;

(6) Continue to include in its eligibility designation another location that has changed its name, location, or address, if--

(i) That location offers 100 percent of an educational program; or

(ii) The Secretary requires the institution to apply for eligibility under Sec. 600.21(c)(2); or

(7) Reestablish eligibility following a change in ownership that results in a change in control according to the provisions of Sec. 600.31.

(d) An institution applying for designation as an eligible institution shall--

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of its eligibility.

(Authority: 20 U.S.C. 1088 and 1141)

(Approved by the Office of Management and Budget under control number 1840-0098)

Sec. 600.21 Eligibility notification.

(a) The Secretary notifies an institution in writing--

(1) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate provisions in Secs. 600.4, 600.5, 600.6 and 600.7;

(2) Whether the institution is certified to participate in the title IV, HEA programs if the institution applied to participate in those programs; and

(3) Of the title IV, HEA programs in which it is eligible to participate, and the title IV, HEA programs for which it is eligible to apply to participate.

(b) If only a portion of the applicant institution qualifies as an eligible institution, the Secretary specifies in the notice the locations or educational programs that qualify as the eligible institution.

(c) If the Secretary receives a notice from an institution as a result of Sec. 600.30(a)(3), the Secretary--

(1) Notifies the institution that the location is an eligible location of that institution, identifies the HEA programs in which the institution may participate without further action, and indicates that the extension of eligibility and participation is effective on the date that the Secretary received the institution's notice; or

(2) Notifies the institution that the institution must apply for eligibility of that location under Sec. 600.20.

(d) The Secretary makes the determination in paragraph (c) of this section by evaluating the institution's ability to provide adequately education or training at the location. In making that evaluation, the Secretary uses such factors as--

(1) The percentage of an educational program offered at the location; and

(2) The financial and administrative capability of the institution.

(Authority: 20 U.S.C. 1088, 1099c, and 1141)

Subpart C--Maintaining Eligibility

Sec. 600.30 Institutional notification requirements.

(a) Except as provided in paragraph (b) of this section, an eligible institution shall notify the Secretary in writing, at an address specified by the Secretary in a notice published in the

Federal Register, no later than 10 days after the change occurs, of any change in the following information provided in the institution's eligibility application:

(1) Its name.

(2) Its address.

(3) The name, number, and address of locations other than the main campus at which it offers at least 50 percent of an educational program and the percentages of the educational programs that it provides at each location.

(4) The way it measures program length, e.g. clock hours or credit hours.

(5) Its ownership, if that ownership change results in a change in control of the institution.

(6) Its status as a proprietary, nonprofit, or public institution.

(7) A person's ability to affect substantially the actions of the institution, if that person did not previously have this ability. The Secretary generally considers a person to have this ability if the person--

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution;

(ii) Holds, together with another member or members of his or her family, at least a 25 percent ownership interest in the institution;

(iii) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution; or

(iv) Is a member of the board of directors, a general partner, the chief executive officer, or other executive officer of--

(A) The institution; or

(B) An entity that holds at least a 25 percent ownership interest in the institution.

(b) An eligible institution that is owned by a publicly-traded corporation shall notify the Secretary in writing, at an address specified by the Secretary in a notice published in the **Federal Register**, of any change in the information that is described in paragraphs (a) (5) through (7) of this section at the same time that the institution notifies the institution's accrediting agency, but no later than 10 days after the corporation learns of the change.

(c) The Secretary notifies the institution in writing if any reported change affects the institution's eligibility, and the effective date of that change.

(d) The institution's failure to inform the Secretary of the information described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against it, including its loss of eligibility.

(e)(1) For the purposes of this section, an *ownership interest* is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation.

(2) The term *ownership interest* includes, but is not limited to--

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(3) The term *ownership interest* does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of--

(i) A mutual fund that is regularly and publicly traded;

(ii) An institutional investor; or

(iii) A profit-sharing plan, provided that all employees are covered by the plan.

(f) For the purposes of this section, the Secretary considers a member of a person's family to be a parent, sibling, spouse or child; spouse's parent or sibling; or sibling's or child's spouse.

(Authority: 20 U.S.C. 1088 and 1141)

(Approved by the Office of Management and Budget under control number 1840-0098)

Note: (a)(7) introductory text amended June 30, 1995, effective July 31, 1995.

Sec. 600.31 Change in ownership resulting in a change of control.

(a) *General.* (1) An institution that undergoes a change in ownership that results in a change of control ceases to qualify as an eligible institution upon the change in ownership and control. A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns this institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

(2) In order to reestablish eligibility and to resume participation in the title IV, HEA programs, the institution must demonstrate to the Secretary that after the change in ownership and control--

(i) The institution satisfies all the applicable requirements contained in Secs. 600.4, 600.5, and 600.6, except that if the institution is a proprietary institution of higher education or postsecondary vocational institution, it need not have been in existence for two years before seeking eligibility; and

(ii) The institution qualifies to be certified to participate under 34 CFR part 668, subpart B.

(b) *Definitions.* The following definitions apply to terms used in this section:

Closely-held corporation. Closely-held corporation (including the term "close corporation") means--

(1) A corporation that qualifies under the law of the State of its incorporation as a closely-held corporation; or

(2) If the State of incorporation has no definition of closely-held corporation, a corporation the stock of which--

(i) Is held by no more than 30 persons; and

(ii) Has not been and is not planned to be publicly offered.

Control. Control (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Ownership. Ownership or ownership interest means a legal or beneficial interest in an entity, or a right to share in the profits derived from the operation of an entity. The term does not include the interests of a mutual fund that is regularly and publicly traded, of an institutional investor, or of a profit-sharing plan in which all employees of an entity may participate.

Parent. The parent or parent corporation of a specified corporation is the corporation or partnership that controls the specified corporation directly or indirectly through one or more intermediaries.

Person. Person includes a legal person (corporation or partnership) or an individual.

Wholly-owned subsidiary. A wholly-owned subsidiary is one substantially all of whose outstanding voting securities are owned by its parent together with the parent's other wholly-owned subsidiaries.

(c) *Standards for identifying changes in ownership and control*--(1) *Closely-held corporation.* A change in ownership and control occurs when--

(i) A person acquires more than 50 percent of the total outstanding voting stock of the corporation;

(ii) A person who holds an ownership interest in the corporation acquires control of more than 50 percent of the outstanding voting stock of the corporation; or

(iii) A person who holds or controls 50 percent or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

(2) *Publicly-traded corporation required to be registered with the Securities and Exchange Commission (SEC).* A change in ownership and control occurs when a change of control of the corporation takes place that gives rise to the obligation to file a Form 8K with the SEC notifying that agency of the change in control.

(3) *Other corporations.* A change in ownership and control of a corporation that is neither closely-held nor required to be registered with the SEC occurs when--

(i) A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation;

(ii) A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation; or

(iii) For a membership corporation, a person who is or becomes a member acquires or loses control of 25 percent of the voting interests of the corporation and control of the corporation.

(4) *Partnership or sole proprietorship.* A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

(5) *Parent corporation.* An institution that is a wholly-owned subsidiary changes ownership and control when the

parent corporation changes ownership and control as described in this section.

(6) *Nonprofit corporation or association.* An institution that is owned by a nonprofit corporation or association changes ownership and control when a change specifically described in this paragraph (c) takes place.

(7) *Public institution.* Notwithstanding paragraph (d) of this section, an institution owned and operated by a governmental entity changes ownership and control only when the ownership of the institution is transferred to a different governmental entity or to another person.

(d) *Covered transactions.* For the purposes of this section, a change in ownership of an institution that results in a change of control may include, but is not limited to--

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent corporation;

(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the liabilities of an institution to its parent corporation;

(6) A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets; or

(7) A conversion of the institution from a for-profit to a nonprofit institution.

(e) *Excluded transactions.* A change in ownership and control otherwise subject to this section does not include a transfer of ownership and control upon the retirement or death of the owner, to--

(1) A member of the owner's family, as described in Sec. 600.30(f);

(2) A person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer.

(f) *Transfers subject to contingency.* An institution may submit and have considered an application for a designation of eligibility and for certification under 34 CFR part 668, subpart B, only when the transfer has been completed. A transfer is complete for purposes of this section when the transfer is otherwise final but is subject to the condition subsequent that the institution obtain approval from the Secretary, the accrediting agency, or State licensing authority after the transfer. A transfer otherwise complete is not considered incomplete or contingent where the transferor retains a interest in the stock or assets of the institution or its owner solely for purposes of security.

(Authority: 20 U.S.C. 1099c)

(Approved by the Office of Management and Budget under control number 1840-0098)

Note: (a)(1), (a)(2) introductory text, (c)(1), (c)(2), (c)(3) introductory text, (c)(4), and (e) introductory text amended June 30, 1995, effective July 31, 1995.

Sec. 600.32 Eligibility of additional locations.

(a) Except as provided in paragraphs (b) and (c) of this section, to qualify as an eligible location, an additional location of an eligible institution must satisfy the applicable requirements of this section and Secs. 600.4, 600.5, 600.6, 600.8, and 600.10.

(b) To qualify as an eligible location, an additional location is not required to satisfy the two-year requirement of Sec. 600.5(a)(7) or 600.6(a)(6), unless--

(1) The location was a facility of another institution that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students,

(2) The applicant institution acquired, either directly from the institution that closed or ceased to provide educational programs, or through an intermediary, the assets at the location; and

(3) The institution from which the applicant institution acquired the assets of the location--

(i) Owes a liability for a violation of an HEA program requirement; and

(ii) Is not making payments in accordance with an agreement to repay that liability.

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of Sec. 600.5(a)(7) or Sec. 600.6(a)(6) if the applicant institution agrees--

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received by the institution that has closed or ceased to provide educational programs;

(2) To be liable for all unpaid refunds owed to students

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who received title IV, HEA program funds; and

(3) To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

(d) For purposes of this section, an "additional location" is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under Sec. 600.21.

(Authority: 20 U.S.C. 1088 and 1141)

Subpart D--Loss of Eligibility

Sec. 600.40 Loss of eligibility.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, an institution, or a location or educational program of an institution, loses its eligibility on the date that--

(i) The institution, location, or educational program fails to meet any of the eligibility requirements of this part;

(ii) The institution or location permanently closes;

(iii) The institution or location ceases to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution, particular location, or the students of the institution or location; or

(iv) For purposes of the title IV, HEA programs--

(A) The institution's period of participation as specified under 34 CFR 668.13 expires;

(B) The institution's provisional certification is revoked under 34 CFR 668.13; or

(C) The Secretary receives a notice under 34 CFR part 667 from a SPRE of the SPRE's determination that the institution shall not be eligible to participate in a title IV, HEA program.

(2) If an institution loses its eligibility because it violated the requirements of Sec. 600.5(a)(8), as evidenced by the determination under provisions contained in Sec. 600.5(d), it loses its eligibility on the last day of the fiscal year used in Sec. 600.5(d), except that if an institution's latest fiscal year was described in Sec. 600.7(h)(1), it loses its eligibility as of June 30, 1994.

(3) If an institution loses its eligibility under the provisions of Sec. 600.7(a)(1), it loses its eligibility on the last day of the award year being evaluated under that provision.

(b) If the Secretary undertakes to terminate the eligibility of an institution because it violated the provisions of Sec. 600.5(a)(8) or Sec. 600.7(a), and the institution requests a hearing, the presiding official must terminate the institution's eligibility if it violated those provisions, notwithstanding its status at the time of the hearing.

(c)(1) If the Secretary designates an institution or any of its educational programs or locations as eligible on the basis of inaccurate information or documentation, the Secretary's designation is void from the date the Secretary made the designation, and the institution or program or location, as applicable, never qualified as eligible.

(2) If an institution closes its main campus or stops providing any educational programs on its main campus, it loses its eligibility as an institution, and that loss of eligibility includes all its locations and all its programs. Its loss of eligibility is effective on the date it closes that campus or stops providing any educational program at that campus.

(d) Except as otherwise provided in this part, if an institution ceases to satisfy any of the requirements for eligibility under this part--

(1) It must notify the Secretary within 30 days of the date that it ceases to satisfy that requirement; and

(2) It becomes ineligible to continue to participate in any HEA program as of the date it ceases to satisfy any of the requirements.

(Authority: 20 U.S.C. 1088, 1099a-3, and 1141)

Sec. 600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that a previously designated eligible institution as a whole, or at one or more of its locations, does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may--

(1) Terminate the institution's eligibility designation in whole or as to a particular location--

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.87, 668.88, 668.89, 668.90 (a)(1), (a)(4), and (c) through (f), and 668.91; or

(ii) Under a show-cause hearing, if the institution's loss of eligibility results from--

(A) Its previously qualifying as an eligible vocational school;

(B) Its previously qualifying as an eligible institution, notwithstanding its unaccredited status, under the transfer-of-credit alternative to accreditation (as that alternative existed in 20 U.S.C. 1085, 1088, and 1141(a)(5)(B) and 600.8 until July 23, 1992);

(C) Its loss of accreditation or preaccreditation;

(D) Its loss of legal authority to provide postsecondary education in the State in which it is physically located;

(E) Its violations of the provisions contained in Sec. 600.5(a)(8) or Sec. 600.7(a);

(F) Its permanently closing;

(G) Its ceasing to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution, a particular location, or the students of the institution or location; or

(H) The Secretary's receipt of a notice under 34 CFR part 667 from a SPRE of the SPRE's determination that the institution shall not be eligible to participate in the title IV, HEA programs;

(2) Limit, under the provisions of 34 CFR 668.86, the authority of the institution to disburse, deliver, or cause the disbursement or delivery of funds under one or more title IV, HEA programs as otherwise provided under 34 CFR 668.26 for the benefit of students enrolled at the ineligible institution or location prior to the loss of eligibility of that institution or location; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in one or more title IV, HEA programs.

(b) If the Secretary believes that an educational program offered by an institution that was previously designated by,the Secretary as an eligible institution under the HEA does not satisfy relevant statutory or regulatory requirements that define that educational program as part of an eligible institution, the Secretary may in accordance with the procedural provisions described in paragraph (a) of this section--

(1) Undertake to terminate that educational program's eligibility under one or more of the title IV, HEA programs under the procedural provisions applicable to terminations described in paragraph (a) of this section;

(2) Limit the institution's authority to deliver, disburse, or cause the delivery or disbursement of funds provided under that title IV, HEA program to students enrolled in that educational program, as otherwise provided in 34 CFR 668.26; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in one or more title IV, HEA programs with respect to students enrolled in that educational program.

(c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

(2) Once a termination under this section becomes final, the termination is effective with respect to any commitment, delivery, or disbursement of funds provided under an applicable title IV, HEA program by the institution--

(i) Made to students enrolled in the ineligible institution, location, or educational program; and

(ii) Made on or after the date of the act or omission that caused the loss of eligibility as to the institution, location, or educational program.

(3) Once a limitation under this section becomes final, the limitation is effective with regard to any commitment, delivery, or disbursement of funds under the applicable title IV, HEA program by the institution--

(i) Made after the date on which the limitation became final; and

(ii) Made to students enrolled in the ineligible institution, location, or educational program.

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution may not certify applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except--

(1) In accordance with the requirements of 34 CFR 668.26(c) with respect to students enrolled in the ineligible institution, location, or educational program, and

(2) After satisfaction of any additional requirements, imposed pursuant to a limitation under paragraph (a)(2) of this section, which may include the following:

(i) Completion of the actions required by 34 CFR 668.26(a) and (b).

(ii) Demonstration that the institution has made satisfactory arrangements for the completion of actions required by 34 CFR 668.26(a) and (b).

(iii) Securing the confirmation of a third party selected by the Secretary that the proposed disbursements or delivery of title IV, HEA program funds meet the requirements of the applicable program.

(iv) Using institutional funds to make disbursements permitted under this paragraph and seeking reimbursement from the Secretary for those disbursements.

(e) If the Secretary undertakes to terminate the eligibility of an institution, location, or program under paragraphs (a) and (b) of this section:

(1) If the basis for the loss of eligibility is the loss of accreditation or preaccreditation, the sole issue is whether the institution, location, or program has the requisite accreditation or preaccreditation. The presiding official has no authority to consider challenges to the action of the accrediting agency.

(2) If the basis for the loss of eligibility is the loss of legal authorization, the sole issue is whether the institution, location, or program has the requisite legal authorization. The presiding official has no authority to consider challenges to the action of a State agency in removing the legal authorization.

(3) If the basis for the loss of eligibility for title IV, HEA program purposes is a notice under 34 CFR part 667 from a SPRE to the Secretary of the SPRE's determination that the institution shall not be eligible to participate in the title IV, HEA programs, the sole issue is whether the SPRE notified the Secretary of that determination. The presiding official has no authority to consider any challenge to the SPRE's determination.

(Authority: 20 U.S.C. 1088, 1091, 1094, 1099a-3, and 1141)

Subpart E--Eligibility of Foreign Institutions To Apply To Participate In the Federal Family Education Loan (FFEL) Programs

Sec. 600.51 Purpose and scope.

(a) A foreign institution is eligible to apply to participate in the Federal Family Education Loan (FFEL) programs if it is comparable to an eligible institution of higher education located in the United States and has been approved by the Secretary in accordance with the provisions of this subpart.

(b) This subpart E contains the procedures and criteria under which a foreign institution may be deemed eligible to apply to participate in the FFEL programs.

(c) This subpart E does not include the procedures and criteria by which a foreign institution that is deemed eligible to apply to participate in the FFEL programs actually applies for that participation. Those procedures and criteria are contained in the regulations for the FFEL programs, 34 CFR part 682, subpart F.

(Authority: 20 U.S.C. 1082, 1088)

Sec. 600.52 Definitions

The following definitions apply to this subpart E:

Foreign graduate medical school: A foreign institution that qualifies to be listed in, and is listed as a medical school in, the most current edition of the *World Directory of Medical Schools* published by the World Health Organization (WHO).

Foreign institution: An institution that is not located in a State.

Passing score: The minimum passing score as defined by the Educational Commission for Foreign Medical Graduates (ECFMG).

Secondary school: A school that provides secondary education as determined under the laws of the country in which the school is located.

(Authority: 20 U.S.C. 1082, 1088)

Sec. 600.53 Requesting an eligibility determination.

(a) To be designated as eligible to apply to participate in the FFEL programs or to continue to be eligible beyond the scheduled expiration of the institution's current period of eligibility, a foreign institution must--

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of that eligibility.

(b) If a foreign institution fails to provide, release, or authorize release to the Secretary of information that is required in this subpart E, the institution is ineligible to apply to participate in the FFEL programs.

(Authority: 20 U.S.C. 1082, 1088)

(Approved by the Office of Management and Budget under control number 1840-0673)

Sec. 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the FFEL programs.

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the FFEL programs if the foreign Institution is a public or private nonprofit educational institution that--

(a) Admits as regular students only persons who--

(1) Have a secondary school completion credential; or

(2) Have the recognized equivalent of a secondary school completion credential;

(b) Is legally authorized by an appropriate authority to provide an eligible educational program beyond the secondary school level in the country in which the institution is located; and

(c) Provides an eligible education program--

(1) For which the institution is legally authorized to award a degree that is equivalent to an associate, baccalaureate, graduate, or professional degree awarded in the United States;

(2) That is at least a two-academic-year program acceptable for full credit toward the equivalent of a baccalaureate degree awarded in the United States; or

(3) That is equivalent to at least a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation.

(Authority: 20 U.S.C. 1082, 1088)

Sec. 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the FFEL programs.

(a) The Secretary considers a foreign medical school to be eligible to apply to participate in the FFEL programs if, in addition to satisfying the criteria in Sec. 600.54 (except the criterion that the institution be public or private nonprofit), the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom medical instruction of not less than 32 months in length, that is supervised closely by members of the school's faculty and that is provided either--

(i) Outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction; or

(ii) In the United States, through a training program for foreign medical students that has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at medical schools in the United States.

(4)(i) The school has been approved by an accrediting body--

(A) That is legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the country where the school is located; and

(B) Whose standards of accreditation of graduate medical schools--

(*1*) Have been evaluated by the advisory panel of medical experts established by the Secretary; and

(*2*) Have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(ii) The school is a public or private nonprofit educational institution that satisfies the requirements in Sec. 4(a)(5)(i).

(5)(i)(A) During the academic year preceding the year for which any of the school's students seeks an FFEL program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class were persons who did not meet the citizenship and residency criteria contained in 34 CFR 668.7(a)(4)(i) through (iii); and

(B) At least 60 percent of the school's students and graduates who took any step of the examinations administered by the Educational Commission for Foreign Medical Graduates (ECFMG) (including the ECFMG English test) in the year preceding the year for which any of the school's students seeks an FFEL program loan received passing scores on the exams; or

(ii) The school's clinical training program was approved by a State as of January 1, 1992, and is currently approved by that State.

(b) In performing the calculation required in paragraph (a)(5)(i)(B) of this section, a foreign graduate medical school shall count as a graduate each person who graduated from the school during the three years preceding the year for which the calculation is performed.

(Authority: 20 U.S.C. 1082, 1088)

Note: (a) amended June 30, 1994, effective July 1, 1994.

Sec. 600.56 Duration of eligibility determination.

(a) The eligibility of a foreign institution under this subpart expires four years after the date of the Secretary's determination that the institution is eligible to apply for participation, except that the Secretary may specify a shorter period of eligibility. In the case of a foreign graduate medical school, continued eligibility is dependent upon annual submission of the data and information required under Sec. 600.55(a)(5)(i), subject to the terms described in Sec. 600.53(b).

(b) A foreign institution that has been determined eligible loses its eligibility on the date that the institution no longer meets any of the criteria in the subpart E.

(c) Notwithstanding the provisions of 34 CFR 668.26, if a foreign institution loses its eligibility under this subpart E, an otherwise eligible student, continuously enrolled at the institution before the loss of eligibility, may receive an FFEL program loan for attendance at that institution for the academic year succeeding the academic year in which the institution lost its eligibility, if the student actually received an FFEL program loan for attendance at the institution for a period during which the institution was eligible under subpart E.

(Authority: 20 U.S.C. 1082, 1088, 1099c)

Note: (c) amended June 30, 1994, effective July 1, 1994.

PART 602--SECRETARY'S PROCEDURES AND CRITERIA FOR THE RECOGNITION OF ACCREDITING AGENCIES

PART 602--SECRETARY'S PROCEDURES AND CRITERIA FOR THE RECOGNITION OF ACCREDITING AGENCIES

Subpart A--General Provisions

Sec.

602.1 Purpose.

602.2 Definitions.

602.3 Organization and membership.

602.4 Submission of information to the Secretary by recognized accrediting agencies.

602.5 Notice to accrediting agencies of Federal actions.

Subpart B--Recognition and Termination Procedures

602.10 Application for recognition.

602.11 Preliminary review by the Secretary.

602.12 Review by the National Advisory Committee on Institutional Quality and Integrity.

602.13 Review and decision by the Secretary.

602.14 Limitation, suspension, or termination of recognition.

602.15 Appeals procedures.

602.16 Publication of list of recognized agencies.

Subpart C--Criteria for Secretarial Recognition

602.20 Geographic scope of accrediting activities.

602.21 Administrative and fiscal responsibility.

602.22 Accreditation experience.

602.23 Application of standards.

602.24 Accreditation processes.

602.25 Substantive change

602.26 Required accreditation standards.

602.27 Additional required operating procedures.

602.28 Due process for institutions and programs.

602.29 Notification of accrediting agency decisions.

602.30 Regard for decisions of States and other accrediting agencies.

Authority: 20 U.S.C. 1099b, unless otherwise noted.

Subpart A--General Provisions

Sec. 602.1 Purpose.

(a)(1) This part establishes procedures and criteria for the Secretary's recognition of accrediting agencies. The purpose of the Secretary's recognition of agencies is to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities as to the quality of education or training offered by the institutions of higher education or the higher education programs they accredit.

(2) The Secretary's recognition of an accrediting agency is based on the Secretary's determination that the agency satisfies the requirements of this part.

(b) The Secretary only grants recognition to those accrediting agencies that--

(1) Accredit--

(i) Institutions of higher education, provided that accreditation by the agency is a required element in enabling those institutions to establish eligibility to participate in HEA programs, or

(ii) Institutions of higher education or higher education programs, provided that accreditation by the agency is a required element in enabling those institutions or programs to establish eligibility to participate in other programs administered by the Department or by other Federal agencies;

(2) Meet the organization and membership requirements specified in Sec. 602.3;

(3) For agencies already recognized by the Secretary, comply with the information sharing requirements specified in Sec. 602.4, and

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(4) Satisfy the criteria for Secretarial recognition specified in Subpart C of this part.

(Authority: 20 U.S.C. 1099b)

Sec. 602.2 Definitions.

The following definitions apply to terms used in this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's established standards and requirements.

Accrediting agency or agency means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer evaluations and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action means the denial, withdrawal, suspension, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program, except that placing an institution or program on probation or issuing a show cause order against an institution or program is not an adverse accrediting action unless it is so defined by the accrediting agency.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Branch campus means:

(1) A location of an institution of higher education that meets the definition of this term in 34 CFR 600.2, and

(2) Any location of an institution, other than the main campus, at which the institution offers at least 50 percent of an educational program.

Designated Department official means the official in the Department of Education to whom the Secretary has delegated the responsibilities indicated in this part.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program that is not subject to any further appeal within the agency.

Institution of higher education or institution means an educational institution that qualifies or may qualify as an eligible institution under 34 CFR part 600.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Nationally recognized accrediting agency, nationally recognized agency, or recognized agency means an accrediting agency that is recognized by the Secretary under this part.

Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies that the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

Representative of the public means a person who is not --

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited by the agency or has applied for accreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the accrediting agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Teach-out agreement means a written agreement between accredited institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program complete the program.

Vocational education means an instructional program, below the bachelor's level, designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the instructional program.

(Authority: 20 U.S.C. 1099b)

Sec. 602.3 Organization and membership.

(a) The Secretary recognizes only the following categories of accrediting agencies:

(1) A State agency that--

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991;

(2) An accrediting agency that--

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in programs authorized under this Act; and

(iii) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section;

(3) An accrediting agency that--

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those institutions or programs, or both, to participate in Federal programs not authorized under this Act; and

(4) An accrediting agency that, for purposes of determining eligibility for Title IV, HEA programs--

(i)(A) Has a voluntary membership of individuals participating in a profession, or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii)(A) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section, or

(B) Obtains a waiver from the Secretary under paragraph (d) of this section of the "separate and independent" requirements contained in paragraph (b) of this section.

(b) For purposes of this section, "separate and independent" means that--

(1) The members of the agency's decision-making body--who make its accrediting decisions, establish its accreditation policies, or both--are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, with no less than one-seventh of the body consisting of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency's budget is developed and determined by the agency without review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an accrediting agency and a related, associated, or affiliated trade association or membership organization does not violate the provisions of paragraph (b) of this section if--

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d)(1) Upon request of an accrediting agency described in paragraph (a)(4) of this section, the Secretary waives the "separate and independent" requirements of this section if the agency demonstrates that--

(i) The agency has been listed by the Secretary as a nationally recognized agency on or before October 1, 1991; and

(ii) The existing relationship between the agency and the related, associated, or affiliated trade association or membership organization does not compromise the independence of the accreditation process.

(2) To demonstrate that the existing relationship between the agency and the related, associated, or affiliated

trade association or membership organization does not compromise the independence of the accreditation process, the agency must show that--

(i) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying the accreditation decisions of the agency;

(ii) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions; and

(iii) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(3) An agency seeking a waiver of the "separate and independent" requirements contained in this section must apply for the waiver each time it seeks recognition or renewal of recognition by the Secretary.

(Authority: 20 U.S.C. 1099b)

Sec. 602.4 Submission of information to the Secretary by recognized accrediting agencies.

Each accrediting agency recognized by the Secretary shall submit to the Secretary--

(a) Notice of final accrediting actions taken by the agency with respect to the institutions and programs it accredits;

(b) A copy of any annual report prepared by the agency;

(c) A copy, updated annually, of the agency's directory of accredited institutions and programs;

d) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if so requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(e) Upon request of the Secretary, information regarding an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including its eligibility to participate in Title IV, HEA programs, for the purpose of assisting the Secretary in resolving problems with the institution's participation in these programs;

(f) The name of any institution or program accredited by the agency that the agency has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse and the reason for the agency's concern; and

(g) Any proposed change in the agency's policies, procedures, or accreditation standards that might alter the agency's--

(1) Scope of recognition; or

(2) Compliance with the requirements of this part.

(Authority: 20 U.S.C. 1099b)

(Approved by the Office of Management and Budget under control number 1840-0607)

Note: OMB number amended September 7, 1994, effective September 7, 1994.

Sec. 602.5 Notice to accrediting agencies of Federal actions.

(a) If the Secretary takes an action against an institution or program, the Secretary notifies the appropriate accrediting agency or agencies no later than 10 days after taking that action.

(b) If the Secretary is informed that another Federal agency is taking an action against an institution or program, the Secretary notifies the appropriate accrediting agency or agencies as soon as possible but no later than 10 days after learning of that action.

(c) If an institution is referred for review under the State Postsecondary Review Program, the Secretary notifies the institution's accrediting agency or agencies at the same time the Secretary notifies the State Postsecondary Review Entity.

(Authority: 20 U.S.C. 1099b)

Subpart B--Recognition and Termination Procedures

Sec. 602.10 Application for recognition.

(a) An accrediting agency seeking initial or renewed recognition by the Secretary as a nationally recognized accrediting agency submits a written application to the Secretary. The application for recognition consists of--

(1) A statement of the agency's requested scope of recognition;

(2) Evidence of the agency's compliance with the criteria for recognition set forth in this part; and

(3) Supporting documentation.

(b) An accrediting agency's application for recognition constitutes a grant of authority to the Secretary to conduct site visits and to gain access to agency records, personnel, and facilities on an announced or unannounced basis.

(c) The Secretary does not make available to the public any confidential agency materials examined by Department personnel or the Secretary as part of the Secretary's evaluation of either an accrediting agency's application for recognition or its compliance with the requirements for recognition.

(Authority: 20 U.S.C. 1099b)

(Approved by the Office of Management and Budget under control number 1840-0607)

Note: OMB number amended September 7, 1994, effective September 7, 1994.

Sec. 602.11 Preliminary review by the Secretary.

(a) Upon receipt of an accrediting agency's application for initial or renewed recognition, the Secretary--

(1) Establishes a schedule for the review of the agency by the designated Department official, the National Advisory Committee on Institutional Quality and Integrity, and the Secretary;

(2) Publishes notice of the agency's application in the **Federal Register**, inviting public comment on the agency's compliance with the requirements for recognition and stipulating a deadline for receipt of public comment; and

(3) Provides State Postsecondary Review Entities and other appropriate organizations with copies of the notice described in paragraph (a)(2) of this section.

(b)(1) The designated Department official analyzes the accrediting agency's application to determine whether the agency satisfies the requirements of this part, taking into account all available relevant information concerning the compliance of the agency with the requirements for recognition. The analysis includes--

(i) Site visits, on an announced or unannounced basis, to the agency and, at the Secretary's discretion, institutions or programs it accredits;

(ii) Review of public comment and other third-party information received or solicited by the Secretary, as well as any other information provided to the Secretary, concerning the performance of the agency in relation to the requirements of this part; and

(iii) Review of complaints or legal actions involving the agency.

(2) The designated Department official's evaluation may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency, relative to their compliance with the accrediting agency's standards, the effectiveness of the agency's standards, and the agency's application of those standards.

(c) The designated Department official--

(1) Prepares a written analysis of the accrediting agency;

(2) Sends the analysis and all supporting documentation, including all third-party comments received by the Secretary, to the agency no later than 45 days before the Advisory Committee meeting; and

(3) Specifies a time period, which will be no later than 14 days before the Advisory Committee meeting, during which the agency may provide the designated Department official with any written comments on the analysis.

(d) The accrediting agency provides any written comments it chooses to make to the designated Department official before the expiration of the time period specified in paragraph (c)(3) of this section.

(e) The designated Department official provides the Advisory Committee with the accrediting agency's application and supporting documentation, the designated Department official's analysis of the application, all information relied upon by the designated Department official in developing the analysis, any response by the agency to the analysis or third-party comment, any Department concurrence with or rebuttal to the agency's response, and any third-party information the Secretary receives regarding the agency.

(f) The designated Department official provides the agency with a copy of any Department rebuttal provided to the Advisory Committee under paragraph (e) of this section.

(g) If the designated Department official fails to provide the agency with the materials described in paragraph (c)(2) of this section within the 45-day time frame specified in that section, the agency may request that the Advisory Committee defer action on its application until the next meeting of the Advisory Committee.

(h) At least 30 days before the Advisory Committee meeting, the Secretary publishes a notice of the meeting in the **Federal Register** and invites interested parties, including those who submitted third-party comments concerning an agency's compliance with the requirements for recognition, to make oral presentations before the Advisory Committee.

(Authority: 20 U.S.C. 1099b)

Sec. 602.12 Review by the National Advisory Committee on Institutional Quality and Integrity.

(a)(1) The Advisory Committee considers an accrediting agency's application at a public meeting and invites the designated Department official, the agency, and other interested parties to make oral presentations at the meeting.

(2) The designated Department official arranges for a transcript to be made of the Advisory Committee meeting.

(b) At the conclusion of the meeting, the Advisory Committee recommends that the Secretary approve or deny recognition of the accrediting agency or defer a decision on the agency's application.

(c)(1) Except as provided in paragraph (c)(2) of this section, the Advisory Committee recommends recognition of an agency if the agency complies with each of the requirements of this part.

(2) The Advisory Committee may recommend recognition despite finding that the agency failed to comply with each of the requirements of this part if the Advisory Committee provides the Secretary with a detailed explanation as to why it believes the agency's failure to comply with the particular requirement(s) does not require denial or deferral.

(3) If the Advisory Committee recommends recognition, the Advisory Committee also recommends the scope of recognition for the agency and a recognition period.

(4) If the Advisory Committee recommends denial of recognition, the Advisory Committee specifies the reasons for the recommendation and the requirements of this part that the agency failed to meet.

(5) If the Advisory Committee recommends deferral of a decision on the agency's application, the Advisory Committee specifies the reasons for the recommendation, the requirements of this part that it believes the agency has not met, and a recommended deferral period.

(d) After the meeting, the Advisory Committee forwards its written recommendations concerning recognition to the Secretary.

(Authority: 20 U.S.C. 1099b, 1145)

Sec. 602.13 Review and decision by the Secretary.

(a) The Secretary determines whether to grant national recognition to an applicant accrediting agency based on the Advisory Committee's recommendation and the full record of the agency's application, including all oral and written presentations to the Advisory Committee by the agency, the designated Department official, and interested third parties.

(b)(1) Before making a final decision, the Secretary affords both the designated Department official and the accrediting agency an opportunity to contest, in writing, the Advisory Committee's recommendation. If either the agency or the designated Department official wishes to contest the recommendation, that party shall notify the Secretary and the other party no later than 10 days after the Advisory Committee meeting.

(2) If the party contesting the Advisory Committee's recommendation wishes to make a written submission to the Secretary, the Secretary must receive that submission no later than 30 days after the Advisory Committee meeting. However, the contesting party may not submit any evidence to the Secretary that it did not submit to the Advisory Committee. The contesting party shall simultaneously provide a copy of its submission to the other party.

(3) If the noncontesting party wishes to respond in writing to the Secretary, the Secretary must receive that submission no later than 30 days after the noncontesting party receives the contesting party's submission. However, the noncontesting party may not submit any evidence to the Secretary that it did not submit to the Advisory Committee. The noncontesting party shall simultaneously provide a copy of its response to the contesting party.

(4) If the Advisory Committee's recommendation is contested, the Secretary renders a final decision after taking into account the two parties' timely written submissions, if any.

(c) The Secretary approves the accrediting agency for national recognition if the Secretary determines that the agency satisfies each of the requirements contained in this part.

(d) The Secretary approves the accrediting agency for national recognition even if the agency does not satisfy each of the requirements contained in this part if the Secretary determines that the agency's effectiveness is not impaired by the noncompliance.

(e) If the Secretary approves the accrediting agency for national recognition, the Secretary defines--

(1) The scope of the agency's recognition for Federal purposes, which shall include the--

(i) Geographic area;

(ii) Degrees and certificates awarded;

(iii) Types of institutions, programs, or both that the agency may accredit; and

(iv) Preaccreditation status(es), if any, that the Secretary approves for recognition; and

(2) The recognition period, which does not exceed five years.

(f) If the Secretary denies recognition to the accrediting agency or grants recognition for a scope narrower than that requested by the agency, the Secretary indicates in writing the reasons for that decision.

(g) If the Secretary defers a decision on the accrediting agency's application, the Secretary--

(1) Indicates in writing the reasons for the deferral and the deferral period; and

(2) Automatically extends any previously granted recognition period until the Secretary reaches a decision on the renewal application.

(h) If the Secretary does not reach a final decision on an accrediting agency's application for renewal of recognition before the expiration of the agency's recognition period, the Secretary automatically extends the previously granted recognition period until the Secretary reaches a decision on the renewal application.

(Authority: 20 U.S.C. 1099b)

Sec. 602.14 Limitation, suspension, or termination of recognition.

(a)(1) The Secretary may limit, suspend, or terminate the recognition of an accrediting agency before completion of its previously granted recognition period if the Secretary determines, after notice and opportunity for a hearing, that the agency fails or has failed to satisfy any of the requirements of this part.

(2)(i) If the agency requests a hearing, the hearing is conducted by the Advisory Committee or by a subcommittee of five members of the Advisory Committee, selected by the Secretary, if the Secretary determines that a more timely hearing is necessary than can be accommodated by the schedule of the full Advisory Committee.

(ii) If the Secretary selects a subcommittee of the Advisory Committee instead of the full Advisory Committee, the agency may challenge the membership of the subcommittee on grounds of conflict of interest on the part of one or more of the members of the subcommittee, and the Secretary replaces the member(s) if the agency's challenge is successful.

(iii) The designated Department official arranges for a transcript to be made of the hearing.

(b) The designated Department official begins a limitation, suspension, or termination proceeding against an accrediting agency by sending the agency a notice that--

(1) Informs the agency of the Secretary's intent to limit, suspend, or terminate its recognition;

(2) Identifies the alleged violations of the governing regulations that constitute the basis for the action;

(3) Describes the limits to be imposed if the Secretary seeks to limit the accrediting agency;

(4) Specifies the effective date of the limitation, suspension, or termination; and

(5) Informs the agency that it may--

(i) Submit to the designated Department official a written response to the notice no later than 30 days after it receives the notice; and

(ii) Request a hearing, which shall take place in Washington, DC, before the Advisory Committee or subcommittee if the agency submits a hearing request to the designated Department official no later than 30 days after it receives the notice.

(c)(1) As part of its response to the limitation, suspension, or termination notice or its hearing request, if any, the accrediting agency shall identify the issues and facts in dispute and its position with regard to those issues and facts.

(2) After receipt of the agency's response and hearing request, if any, the designated Department official--

(i) Transmits the limitation, suspension, or termination notice and the agency's response, if any, to that notice to the Advisory Committee or subcommittee; and

(ii) Establishes the date and time of any hearing before the Advisory Committee or subcommittee.

(d)(1) Except as provided in paragraph (d)(2) of this section, if a hearing is held, the Advisory Committee or subcommittee shall allow the designated Department official, the accrediting agency, and any interested party to make an oral or written presentation. That presentation may include the introduction of written and oral evidence.

(2) If the designated Department official and the accrediting agency each agree, the Advisory Committee or subcommittee review shall be based solely on the written materials submitted to it under paragraph (c)(2)(i) of this section.

(e)(1) After the Advisory Committee or subcommittee reviews the presentations, it shall issue an opinion in which it--

(i) Makes findings of fact based upon the evidence presented;

(ii) Recommends whether a limitation, suspension, or termination of the agency's recognition is warranted; and

(iii) Provides the reasons for that recommendation.

(2) The Advisory Committee or subcommittee shall--

(i) Transmit its written opinion to the Secretary; and

(ii) Provide a copy of its opinion to the designated Department official and the accrediting agency.

(f)(1) Unless the Advisory Committee's or subcommittee's recommendation is appealed, after receiving the recommendation, the Secretary issues a decision on whether to limit, suspend, or terminate the agency's recognition, based upon the Advisory Committee's or subcommittee's recommendation and the full record before the Advisory Committee or subcommittee.

(2) Either the accrediting agency or the designated Department official may appeal the Advisory Committee's or subcommittee's recommendation by filing a notice of appeal with the Secretary within 10 days of receipt of the Advisory Committee's or subcommittee's recommendation. If either party files an appeal with the Secretary, that party shall simultaneously provide a copy of the notice of appeal to the other party.

(3) The party appealing the Advisory Committee's or subcommittee's recommendation has 30 days after its receipt of the recommendation to make a written submission to the Secretary challenging the recommendation. However, the appealing party may not submit any evidence that was not submitted to the Advisory Committee or subcommittee. The appealing party shall simultaneously provide a copy of the submission to the other party.

(4) The nonappealing party has 30 days from the date it receives the appealing party's submission to file a written response to the Secretary regarding the submissions of the appealing party and shall simultaneously provide the appealing party with a copy of its response. The nonappealing party may not submit any evidence that was not submitted to the Advisory Committee or subcommittee.

(5) If the Advisory Committee's or subcommittee's recommendation is appealed, the Secretary renders a final decision after taking into account that recommendation and the parties' written submissions on appeal. (Authority: 20 U.S.C. 1099b)

Sec. 602.15 Appeals procedures.

An accrediting agency may appeal the Secretary's final decision under this part regarding the agency's recognition to the Federal courts as a final decision in accordance with applicable Federal law.

(Authority: 20 U.S.C. 1099b)

Sec. 602.16 Publication of list of recognized agencies.

(a) The Secretary periodically publishes in the **Federal Register** a list of recognized accrediting agencies and each agency's scope of recognition.

(b) If the Secretary denies recognition to a previously recognized accrediting agency, or limits, suspends, or terminates its recognition during a previously granted recognition period, the Secretary publishes a notice of that action in the **Federal Register** and makes available to the public, upon request, the Secretary's determination.

(Authority: 20 U.S.C. 1099b)

Subpart C--Criteria for Secretarial Recognition

Sec. 602.20 Geographic scope of accrediting activities.

To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that the geographical scope of its accrediting activities covers--

(a) A State, if the agency is a component of a State government;

(b) A region of the United States that includes at least three States that are contiguous or in close geographical proximity to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

Sec. 602.21 Administrative and fiscal responsibility.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if it has, and will likely continue to have--

(1) Adequate administrative staff to--

(i) Carry out its accrediting responsibilities effectively; and

(ii) Manage its finances effectively;

(2) Competent and knowledgeable individuals, qualified by experience and training, responsible for on-site evaluation, policy-making, and decision-making regarding accreditation and preaccreditation status;

(3) Representation on its evaluation, policy, and decision-making bodies of--

(i) For an institutional accrediting agency, both academic and administrative personnel; and

(ii) For a programmatic accrediting agency, both educators and practitioners;

(4) Representation of the public on all decision-making bodies;

(5) Clear and effective controls against conflicts of interest or the appearance of conflicts of interest by the agency's board members, commissioners, evaluation team members, consultants, administrative staff, and other agency representatives;

(6) Adequate financial resources to carry out its accrediting responsibilities, taking into account the funds required to conduct the range of accrediting activities specified in the requested scope of recognition and the income necessary to meet the anticipated costs of its activities in the future; and

(7) Complete and accurate records of--

(i) Its last two full accreditation or preaccreditation reviews of each institution or program, including on-site evaluation team reports, institution or program responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and the institution's or program's most recent self-study report; and

(ii) All preaccreditation and accreditation decisions, including all adverse actions.

(Authority: 20 U.S.C. 1099b)

Sec. 602.22 Accreditation experience.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has adequate experience in accrediting institutions, programs, or both.

(b) The Secretary considers that an accrediting agency satisfies the requirements of paragraph (a) of this section if it has--

(1) Granted accreditation or preaccreditation status to institutions or programs in the geographical area for which it seeks recognition;

(2) Conducted accreditation activities covering the range of the specific degrees, certificates, and programs for which it seeks recognition, including--

(i) Granting accreditation or preaccreditation status; and

(ii) Providing technical assistance related to accreditation to institutions, programs, or both; and

(3) Established policies, evaluative criteria, and procedures, and made evaluative decisions, that are accepted throughout the United States by--

(i) Educators and educational institutions; and

(ii) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

Sec. 602.23 Application of standards.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it consistently applies and enforces written standards that ensure that the education or training offered by an institution or program is of sufficient quality to achieve, for the duration of any accreditation period granted by the agency, the stated objective for which it is offered.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if--

(1) The agency's written standards and procedures for

accreditation and preaccreditation, if that latter status is offered, comply with the requirements of this part;

(2) The agency's preaccreditation standards, if offered, are appropriately related to the agency's accreditation standards, with a limit on preaccreditation status of no more than five years for any institution or program;

(3) The agency's organizations, functions, and procedures include effective controls against the inconsistent application of its criteria and standards;

(4) The agency bases its decisions regarding accreditation or preaccreditation on its published criteria; and

(5) The agency maintains a systematic program of review designed to ensure that its criteria and standards are valid and reliable indicators of the quality of the education or training provided by the institutions or programs it accredits and are relevant to the education or training needs of affected students.

(6) The agency demonstrates to the Secretary that, as a result of its program of review under paragraph (b)(5) of this section, each of its standards provides--

(i) A valid measure of the aspects of educational quality it is intended to measure; and

(ii) A consistent basis for determining the educational quality of different institutions and programs.

(Authority: 20 U.S.C. 1099b)

Sec. 602.24 Accreditation processes.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has effective mechanisms for evaluating compliance with its standards and that those mechanisms cover the full range of an institution's or program's offerings, including those offerings conducted at branch campuses and additional locations.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if--

(1) In determining whether to grant initial or renewed accreditation, the accrediting agency evaluates whether an institution or program--

(i) Maintains clearly specified educational objectives consistent with its mission and appropriate in light of the degrees or certificates it awards;

(ii) Is successful in achieving its stated objectives;

(iii) Maintains degree and certificate requirements that at least conform to commonly accepted standards; and

(iv) Complies with the agency's criteria;

(2) In reaching its determination to grant initial or renewed accreditation, the accrediting agency--

(i) Requires an in-depth self-study by each institution or program, in accordance with guidance provided by the agency, that includes the assessment of educational quality and the institution's or program's continuing efforts to improve educational quality;

(ii) Conducts at least one on-site review of the institution or program at which the agency obtains sufficient information to enable it to determine if the institution or program complies with the agency's criteria;

(iii) Conducts its own analyses and evaluations of the self-study and supporting documentation furnished by the institution or program, and any other appropriate information from other sources, to determine whether the institution or program complies with the agency's standards; and

(iv) Provides to the institution or program a detailed written report on its review assessing--

(A) The institution's or program's compliance with the agency's standards, including areas needing improvement; and

(B) The institution's or program's performance with respect to student achievement;

(3) In addition to the on-site visit described in paragraph (b)(2)(ii) of this section, an institutional accrediting agency whose accreditation enables the institutions it accredits to seek eligibility to participate in Title IV, HEA programs conducts-during the interval between the agency's award of accreditation or preaccreditation to the institution or program and the expiration of the accreditation or preaccreditation period-at least one unannounced on-site inspection at each institution that provides vocational education or training for the purpose of determining whether the institution has the personnel, facilities, and resources it claimed to have either during its previous on-site review or in subsequent reports to the accrediting agency;

(4) The accrediting agency--

(i) Monitors institutions or programs throughout the accreditation or preaccreditation period to ensure continuing compliance with the agency's standards or criteria; and

(ii) Conducts special evaluations, site visits, or both, as necessary; and

(5) The accrediting agency regularly reevaluates institutions or programs that have been granted accreditation or preaccreditation.

(Authority: 20 U.S.C. 1099b)

Sec. 602.25 Substantive change.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an institutional accrediting agency must demonstrate to the Secretary that it maintains adequate substantive change policies that ensure that any substantive change to the educational mission or program(s) of an institution after the agency has granted accreditation or preaccreditation to the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if--

(1) The agency requires prior approval of the substantive change by the agency before the change is included in the agency's previous grant of accreditation or preaccreditation to the institution; and

(2) The agency's definition of substantive change includes, but is not limited to, the following types of change:

(i) Any change in the established mission or objectives of the institution;

(ii) Any change in the legal status or form of control of the institution;

(iii) The addition of courses or programs that represent a significant departure, in terms of either in the content or method of delivery, from those that were offered when the agency most recently evaluated the institution;

(iv) The addition of courses or programs at a degree or credential level above that included in the institution's current accreditation or preaccreditation;

(v) A change from clock hours to credit hours or vice versa; and

(vi) A substantial increase in--

(A) The number of clock or credit hours awarded for successful completion of a program; or

(B) The length of a program.

(c) The agency has discretion to determine the procedures it will use to grant prior approval of the substantive change, which may, but need not, require an on-site evaluation before approval is granted.

(Authority: 20 U.S.C. 1099b)

Sec. 602.26 Required accreditation standards.

(a)(1) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that its accreditation or preaccreditation standards, or both, are sufficiently rigorous to ensure that the agency is a reliable authority as to the quality of the education or training provided by the institutions or programs it accredits.

(2) For a programmatic accrediting agency that does not serve as an institutional accrediting agency for any of the programs it accredits, the standards must address the areas contained in paragraph (b) of this section in terms of the type and level of the program rather than in terms of the institution.

(3) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions accredited by an institutional accrediting agency recognized by the Secretary, the accrediting agency is not required to have the standards described in paragraphs (b)(7), (b)(8), (b)(10), and (b)(12) of this section.

(b) In order to assure that an accrediting agency is a reliable authority as to the quality of the education or training provided by an institution or program it accredits, the agency must have standards that effectively address the quality of an institution or program in the following areas:

(1) Curricula.

(2) Faculty.

(3) Facilities, equipment, and supplies.

(4) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(5) Student support services.

(6) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(7) Program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered.

(8) Measures of program length in clock hours or credit hours.

(9) Success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.

(10) Default rates in the student loan programs under Title IV of the Act, based on the most recent data provided by the Secretary.

(11) Record of student complaints received by, or available to, the agency.

(12) Compliance with the institution's program responsibilities under Title IV of the Act, including any results of financial or compliance audits, program reviews, and such other information as the Secretary may provide to the agency.

(c)(1) An accrediting agency shall take appropriate action if its review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard.

(2) If the agency believes that the institution or program is not in compliance with the standards, the agency shall--

(i) Take prompt adverse action against the institution or program; or

(ii) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time frame specified by the agency.

(3) The accrediting agency has sole discretion to determine the course of action it chooses under paragraph (c)(2) of this section and, if it selects the option specified in paragraph (c)(2)(ii) of this section, the time frame for the institution or program to bring itself into compliance with agency standards. However, except as indicated in paragraph (c)(4) of this section, the specified period may not exceed--

(i) Twelve months, if the program is less than one year in length;

(ii) Eighteen months, if the program is at least one year, but less than two years, in length; or

(iii) Two years, if the program is at least two years in length.

(4) If the institution or program does not bring itself into compliance within the specified period, the agency must take adverse action unless the agency extends the period for achieving compliance for good cause.

(d) An accrediting agency shall have a reasonable basis for determining that the information it relies on for making the assessments described in paragraphs (b) and (c) of this section is accurate.

(e) An accrediting agency that has established and applies the standards in paragraph (b) of this section may establish any additional accreditation standards as it deems appropriate.

(Authority: 20 U.S.C. 1091, 1099b)

Sec. 602.27 Additional required operating procedures.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it satisfies the procedural requirements contained in other provisions of this part and the additional requirements contained in paragraphs (b) through (h) of this section.

(b) If the accrediting agency accredits institutions and that accreditation enables those institutions to seek eligibility to participate in Title IV, HEA programs--

(1) The agency requires the institution to--

(i) Notify the agency if the institution plans to establish a branch campus; and

(ii) Submit a business plan described in paragraph (b)(2) of this section for the branch campus;

(2) The business plan that an institution submits under paragraph (b)(1)(ii) of this section must contain a description of--

(i) The educational program to be offered at the branch campus;

(ii) The projected revenues and expenditures and cash flow at the branch campus; and

(iii) The operation, management, and physical resources at the branch campus;

(3) The agency extends accreditation to the branch campus only after evaluating the business plan and taking other necessary actions to permit the agency to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to satisfy the accrediting agency's standards for accreditation;

(4) The agency undertakes a site visit of the branch campus as soon as practicable, but no later than six months after the establishment of that branch campus;

(5) The agency undertakes a site visit of an institution

that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership; and

(6) The agency requires any institution it accredits that enters into a teach-out agreement with another institution to submit that teach-out agreement to the agency for approval and approves the teach-out agreement if the agreement--

(i) Is consistent with applicable standards and regulations; and

(ii) Provides for the equitable treatment of students by ensuring that--

(A) Students are provided, without additional charge, all of the instruction promised by the closed institution prior to its closure but not provided to the students because of the closure; and

(B) The teach-out institution is geographically proximate to the closed institution and can demonstrate compatibility of its program structure and scheduling to that of the closed institution.

(c) The accrediting agency maintains and makes publicly available written materials describing--

(1) Each type of accreditation and preaccreditation granted by the agency;

(2) Its procedures for applying for accreditation or preaccreditation;

(3) The criteria and procedures used by the agency for determining whether to grant, reaffirm, reinstate, deny, restrict, revoke, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The names, academic and professional qualifications, and relevant employment and organizational affiliations of the members of the agency's policy and decision-making bodies as well as the agency's principal administrative staff; and

(5) The institutions or programs that the agency currently accredits or preaccredits and the date when the agency will review or reconsider the accreditation or preaccreditation of each institution or program.

(d) In accordance with agency policy, the accrediting agency publishes the year when an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation and provides an opportunity for third-party comment, either in writing or at a public hearing, at the agency's discretion, concerning the institution's or program's qualifications for accreditation or preaccreditation.

(e) The accrediting agency provides advance public notice of proposed new or revised criteria, giving interested parties adequate opportunity to comment on these proposals prior to their adoption.

(f) The accrediting agency--

(1) Reviews any complaint it receives against an accredited institution or program, or the agency itself, that is related to the agency's standards, criteria, or procedures; and

(2) Resolves the complaint in a timely, fair, and equitable manner.

(g) The accrediting agency ensures that, if an institution or program elects to make a public disclosure of its accreditation or preaccreditation status granted by the agency, the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, address, and telephone number of the accrediting agency.

(h) The accrediting agency provides for the public correction of incorrect or misleading information released by an accredited or preaccredited institution or program about--

(1) The accreditation status of the institution or program;

(2) The contents of reports of site team visitors; and

(3) The agency's accrediting actions with respect to the institution or program.

(Authority: 20 U.S.C. 1099b)

(Approved by the Office of Management and Budget under control number 1840-0607)

Note: OMB control number amended September 7, 1994, effective September 7, 1994.

Sec. 602.28 Due process for institutions and programs.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that the procedures it uses throughout the accrediting process satisfy due process requirements.

(b) The Secretary considers that an accrediting agency's procedures satisfy due process requirements if--

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(1) The agency sets forth in writing its procedures governing its accreditation or preaccreditation processes;

(2) The agency's procedures afford an institution or program a reasonable period of time to comply with agency requests for information and documents;

(3) The agency notifies the institution or program in writing of any adverse accrediting action;

(4) The agency's notice details the basis for any adverse accrediting action;

(5) The agency permits the institution or program the opportunity to appeal an adverse accrediting action, and the right to representation by counsel during an appeal, except that the agency, at its sole discretion, may limit the appeal to a written appeal; and

(6) The agency notifies the appellant in writing of the result of the appeal and the basis for that result.

(Authority: 20 U.S.C. 1099b)

Sec. 602.29 Notification of accrediting agency decisions.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, except as provided in paragraph (b) of this section, an accrediting agency must demonstrate to the Secretary that its written policies, procedures, and practices require it to notify the Secretary, the appropriate State postsecondary review entity, the appropriate accrediting agencies, and the public of the following types of decisions, no later than 30 days after a decision is made:

(1) A decision by the agency to award initial accreditation or preaccreditation to an institution or program.

(2) A final decision by the agency to--

(i) Deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program; or

(ii) Take other adverse action against an institution or program.

(3) A decision by the agency to place an institution or program on probation.

(4) A decision by an accredited institution or program to withdraw voluntarily from accreditation or formal preaccreditation status.

(5) A decision by an accredited institution or program to let its accreditation or preaccreditation lapse.

(b) If the agency's final decision is to deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program or to take other adverse action against an institution or program, the agency must notify the Secretary of that decision at the same time it notifies the institution or program.

(c) No later than 60 days after a final decision, the accrediting agency makes available to the Secretary, the appropriate State postsecondary review entity, and the public upon request, a brief statement summarizing the reasons for the agency's determination to deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program, and the comments, if any, that the affected institution or program may wish to make with regard to that decision.

(d)(1) For purposes of the decisions described in paragraph (a)(4) of this section, the date of the decision is the date on which the accrediting agency receives notification by the institution or program that it is voluntarily withdrawing from accreditation or preaccreditation.

(2) For purposes of the decisions described in paragraph (a)(5) of this section, the date of the decision is the date on which accreditation or preaccreditation lapses.

(Authority: 20 U.S.C. 1099b)

Sec. 602.30 Regard for decisions of States and other accrediting agencies.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that--

(1) If the accrediting agency accredits institutions--

(i) The agency accredits only those institutions that are legally authorized under applicable State law to provide a program of education beyond the secondary level;

(ii) The agency does not renew, under the conditions described in paragraph (b) of this section, the accreditation or preaccreditation of an institution during a period in which the institution--

(A) Is the subject of an interim action by a recognized institutional accrediting agency potentially leading to the suspension, revocation, or termination of accreditation or preaccreditation;

(B) Is the subject of an interim action by a State agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;

(C) Has been notified of a threatened loss of accreditation, and the due process procedures required by the action have not been completed; or

(D) Has been notified of a threatened suspension, revocation, or termination by the State of the institution's legal authority to provide postsecondary education, and the due process procedures required by the action have not been completed;

(iii) In considering whether to grant initial accreditation or preaccreditation to an institution, the agency takes into account actions by–

(A) Recognized institutional accrediting agencies that have denied accreditation or preaccreditation to the institution, placed the institution on public probationary status, or revoked the accreditation or preaccreditation of the institution; and

(B) A State agency that has suspended, revoked, or terminated the institution's legal authority to provide postsecondary education;

(iv) If the agency grants accreditation or preaccreditation to an institution notwithstanding the actions described in paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the agency provides the Secretary a thorough explanation, consistent with its accreditation standards, why the previous action by a recognized institutional accrediting agency or the State does not preclude the agency's grant of accreditation or preaccreditation; and

(v) If a recognized institutional accrediting agency takes an adverse action with respect to a dually-accredited institution or places the institution on public probationary status, or if a recognized programmatic accrediting agency takes an adverse action for reasons associated with the overall institution rather than the specific program against a program offered by an institution or places the program on public probation, the agency promptly reviews its accreditation or preaccreditation of the institution to determine if it should also take adverse action against the institution.

(2) If the accrediting agency accredits programs--

(i) The agency does not renew, under the conditions described in paragraph (b) of this section, the accreditation or preaccreditation status of a program during any period in which the institution offering the program--

(A) Is the subject of an interim action by a recognized institutional accrediting agency potentially leading to the suspension, revocation, or termination of accreditation or preaccreditation;

(B) Is the subject of an interim action by a State agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;

(C) Has been notified of a threatened loss of accreditation, and the due process procedures required by the action have not been completed;

(D) Has been notified of a threatened suspension, revocation, or termination by the State of the institution's legal authority to provide postsecondary education, and the due process procedures required by the action have not been completed;

(ii) In considering whether to grant initial accreditation or preaccreditation to a program, the agency takes into account actions by--

(A) Recognized institutional accrediting agencies that have denied accreditation or preaccreditation to the institution offering the program, placed the institution on public probationary status, or revoked the accreditation or preaccreditation of the institution; and

(B) A State agency that has suspended, revoked, or terminated the institution's legal authority to provide postsecondary education;

(iii) If the agency grants accreditation or preaccreditation to a program notwithstanding the actions described in paragraph (a)(2)(ii) of this section, the agency provides to the Secretary a thorough explanation, consistent with its accreditation standards, why the previous action by a recognized institutional accrediting agency or the State does not preclude the agency's grant of accreditation or preaccreditation; and

(iv) If a recognized institutional accrediting agency takes adverse action with respect to the institution offering the program or places the institution on public probationary status, the agency promptly reviews its accreditation or preaccreditation of the program to determine if it should take adverse action against the program.

(3) The agency routinely shares with other appropriate recognized accrediting agencies and State agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(b) An accrediting agency is subject to the requirements contained in paragraph (a) of this section if the accrediting agency knew, or should have known, of the actions being taken by another recognized accrediting agency or State agency.

(Authority: 20 U.S.C. 1099b)

PART 603--SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

Subpart A--(Reserved)

Subpart B--Criteria for State Agencies

Sec.

603.20 Scope.

603.21 Publication of list.

603.22 Inclusion on list.

603.23 Initial recognition, and reevaluation.

603.24 Criteria for State agencies.

Authority: 20 U.S.C. 403(b), 1085(b), 1141(a), 1248(11); 42 U.S.C. 293a(b), 295f-3(b), 295h-4(1)(D), 298b(f); 38 U.S.C. 1775(a), unless otherwise noted.

Subpart A--(Reserved)

Subpart B--Criteria for State Agencies

Sec. 603.20 Scope.

(a) Pursuant to section 438(b) of the Higher Education Act of 1965 as amended by Pub. L. 92-318, the Secretary is required to publish a list of state agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for Federal student assistance programs administered by the Department.

(b) Approval by a State agency included on the list will provide an alternative means of satisfying statutory standards as to the quality of public postsecondary vocational education to be undertaken by students receiving assistance under such programs.

(Authority: 20 U.S.C. 1087-1(b))

Sec. 603.21 Publication of list.

Periodically the Secretary will publish a list in the FEDERAL REGISTER of the State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States.

(Authority: 20 U.S.C. 1087-1(b))

Sec. 603.22 Inclusion on list.

Any State agency which desires to be listed by the Secretary as meeting the criteria set forth in Sec. 603.24 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1087-1(b))

Sec. 603.23 Initial recognition, and reevaluation.

For initial recognition and for renewal of recognition, the State agency will furnish information establishing its compliance with the criteria set forth in Sec. 603.24. This information may be supplemented by personal interviews or by review of the agency's facilities, records, personnel qualifications, and administrative management. Each agency listed will be reevaluated by the Secretary at his discretion, but at least once every four years. No adverse decision will become final without affording an opportunity for a hearing.

(Authority: 20 U.S.C. 1087-1(b))

Sec. 603.24 Criteria for State agencies.

The following are the criteria which the Secretary will utilize in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its respective State.

(a) *Functional aspects.* The functional aspects of the State agency must be shown by:

(1) *Its scope of operations.* The agency:

(i) Is statewide in the scope of its operations and is legally authorized to approve public postsecondary vocational institutions or programs;

(ii) Clearly sets forth the scope of its objectives and activities, both as to kinds and levels of public postsecondary vocational institutions or programs covered, and the kinds of operations performed;

(iii) Delineates the process by which it differentiates among and approves programs of varying levels.

(2) *Its organization.* The State agency:

(i) Employs qualified personnel and uses sound procedures to carry out its operations in a timely and effective manner;

(ii) Receives adequate and timely financial support, as shown by its appropriations, to carry out its operations;

(iii) Selects competent and knowledgeable persons, qualified by experience and training, and selects such persons in accordance with nondiscriminatory practices, (A) to participate on visiting teams, (B) to engage in consultative services for the evaluation and approval process, and (C) to serve on decision-making bodies.

(3) *Its procedures.* The State agency:

(i) Maintains clear definitions of approval status and has developed written procedures for granting, reaffirming, revoking, denying, and reinstating approval status;

(ii) Requires, as an integral part of the approval and reapproval process, institutional or program self-analysis and onsite reviews by visiting teams, and provides written and consultative guidance to institutions or programs and visiting teams.

(A) Self-analysis shall be a qualitative assessment of the strengths and limitations of the instructional program, including the achievement of institutional or program objectives, and should involve a representative portion of the institution's administrative staff, teaching faculty, students, governing body, and other appropriate constituencies.

(B) The visiting team, which includes qualified examiners other than agency staff, reviews instructional content, methods and resources, administrative management, student services, and facilities. It prepares written reports and recommendations for use by the State agency.

(iii) Reevaluates at reasonable and regularly scheduled intervals institutions or programs which it has approved.

(b) *Responsibility and reliability.* The responsibility and reliability of the State agency will be demonstrated by:

(1) Its responsiveness to the public interest. The State agency:

(i) Has an advisory board which provides for representation from public employment services and employers, employees, postsecondary vocational educators, students, and the general public, including minority groups. Among its functions, this structure provides counsel to the State agency relating to the development of standards, operating procedures and policy, and interprets the educational needs and manpower projections of the State's public postsecondary vocational education system;

(ii) Demonstrates that the advisory body makes a real and meaningful contribution to the approval process;

(iii) Provides advance public notice of proposed or revised standards or regulations through its regular channels of communications, supplemented, if necessary, with direct communication to inform interested members of the affected community. In addition, it provides such persons the opportunity to comment on the standards or regulations prior to their adoption;

(iv) Secures sufficient qualitative information regarding the applicant institution or program to enable the institution or program to demonstrate that it has an ongoing program of evaluation of outputs consistent with its educational goals;

(v) Encourages experimental and innovative programs to the extent that these are conceived and implemented in a manner which ensures the quality and integrity of the institution or program;

(vi) Demonstrates that it approves only those institutions or programs which meet its published standards; that its standards, policies, and procedures are fairly applied; and that its evaluations are conducted and decisions are rendered under conditions that assure an impartial and objective judgment;

(vii) Regularly reviews its standards, policies and procedures in order that the evaluative process shall support constructive analysis, emphasize factors of critical importance, and reflect the educational and training needs of the student;

(viii) Performs no function that would be inconsistent with the formation of an independent judgment of the quality of an educational institution or program;

(ix) Has written procedures for the review of complaints pertaining to institutional or program quality as these relate to the agency's standards, and demonstrates that such procedures are adequate to provide timely treatment of such complaints in a manner fair and equitable to the complainant and to the institution or program;

(x) Annually makes available to the public (A) its policies for approval, (B) reports of its operations, and (C) list of institutions or programs which it has approved;

(xi) Requires each approved school or program to report on changes instituted to determine continued compliance with standards or regulations;

(xii) Confers regularly with counterpart agencies that have similar responsibilities in other and neighboring States about methods and techniques that may be used to meet those responsibilities.

(2) Its assurances that due process is accorded to institutions or programs seeking approval. The State agency:

(i) Provides for adequate discussion during the on-site visit between the visiting team and the faculty, administrative staff, students, and other appropriate persons;

(ii) Furnishes as a result of the evaluation visit, a written report to the institution or program commenting on areas of strength, areas needing improvement, and, when appropriate, suggesting means of improvement and including specific areas, if any, where the institution or program may not be in compliance with the agency's standards;

(iii) Provides the chief executive officer of the institution or program with opportunity to comment upon the written report and to file supplemental materials pertinent to the facts and conclusions in the written report of the visiting team before the agency takes action on the report;

(iv) Provides the chief executive officer of the institution with a specific statement of reasons for any adverse action, and notice of the right to appeal such action before an appeal body designated for that purpose;

(v) Publishes rules of procedure regarding appeals;

(vi) Continues the approval status of the institution or program pending disposition of an appeal;

(vii) Furnishes the chief executive officer of the institution or program with a written decision of the appeal body, including a statement of its reasons therefor.

(c) *Capacity to foster ethical practices.* The State agency must demonstrate its capability and willingness to foster ethical practices by showing that it:

(i) Promotes a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services;

(ii) Maintains appropriate review in relation to the ethical practices of each approved institution or program.

(Authority: 20 U.S.C. 1087-1(b))

PART 653--PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Subpart A--General

Sec.

653.1 What is the Paul Douglas Teacher Scholarship Program?

653.2 Who is eligible for an award?

653.3 What kind of activity may be assisted?

653.4 What regulations apply?

653.5 What definitions apply?

Subpart B--How Does a State Apply for a Grant?

653.10 What must a State do to apply for a grant?

653.11 What is the content of a grant application?

Subpart C--How Does the Secretary Make a Grant to a State?

653.20 How does the Secretary approve a grant application?

653.21 How does the Secretary determine the amount of a grant to a State?

Subpart D--How Does a Student Apply for a Scholarship?

653.30 What must a student do to apply for a scholarship?

653.31 Where does a student obtain an application?

Subpart E--How Does a State Select Scholars?

653.40 How does the selection panel select scholars?

653.41 Who is eligible to be selected as a scholar?

653.42 What are the selection criteria and procedures?

Subpart F--What Are the Scholarship Conditions?

653.50 What agreement must a scholar have with the State Agency?

653.51 What are the requirements for a scholar to receive scholarship payments?

Subpart G--What Post-Award Conditions Must Be Met by State Agencies and Scholars?

653.60 What requirements must a State Agency meet in the administration of this program?

653.61 How does a scholar fulfill the teaching obligation under this program?

653.62 What are the consequences of a scholar's noncompliance with the scholarship agreement?

Authority: 20 U.S.C. 1104-1104k, unless otherwise noted.

Subpart A--General

Sec. 653.1 What is the Paul Douglas Teacher Scholarship Program?

Under the Paul Douglas Teacher Scholarship Program the Secretary makes grants to the States to award scholarships to outstanding secondary school graduates who demonstrate an interest in teaching to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104)

Sec. 653.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in Sec. 653.41 are eligible to be selected for scholarships under this program.

(Authority: 20 U.S.C. 1104 and 1104b)

Sec. 653.3 What kind of activity may be assisted?

A State may use its funds under this program, including principal and interest payments it receives from scholars under Sec. 653.62, only for making scholarship payments to scholars.

(Authority: 20 U.S.C. 1104)

PART 653–PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Sec. 653.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60-75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 653.

(Authority: 20 U.S.C. 1104 et. seq.)

Sec. 653.5 What definitions apply?

(a) *Definitions in the HEA.*

(1) The following term used in this part is defined in section 472 of the HEA:

Cost of attendance

(2) The following term used in this part is defined in section 1201(a) of the HEA:

Institution of higher education

(b) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Elementary school
Local educational agency (LEA)
Nonprofit
Preschool
Private
Public
Secondary school
Secretary
State
State educational agency (SEA)

(c) Other definitions. The following definitions also apply to this part:

Academic year means a period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one of the following:

(i) Two semesters.

(ii) Two trimesters.

(iii) Three quarters.

Award year means the period of time from July 1 of one year through June 30 of the following year.

Federally approved teacher shortage areas means areas that are–

(i)(A) Geographic regions in a State in which there are shortages of elementary or secondary school teachers; or

(B) Specific grade levels or academic, instructional, subject matter, or discipline classifications in which there are statewide shortages of elementary or secondary school teachers; and

(ii) Designated by the Secretary in accordance with 34 CFR 682.210(j)(6) or (7), except that the Secretary gives special consideration to areas–

(A) In which emergency certification of individuals is being used to correct teacher shortages; and

(B) In States that have retirement laws permitting early retirement.

Full-time student means a student enrolled in an institution of higher education who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

Geographically isolated area means an area that lacks close economic and social relationships with an urbanized area, as defined by the Bureau of the Census, that is not easily accessible by public transportation.

Group historically underrepresented in teaching means a group of individuals whose representation among teachers in the State is proportionately less than its representation among the general population in the State, as determined by the State, over a significant period of time.

HEA means the Higher Education Act of 1965, as amended.

Inner city means the central or most densely populated region within an incorporated city that has a population of 50,000 or more.

Limited English proficient students means students--

(i)(A) Who were not born in the United States;

(B) Whose parents normally use a language other than English;

(C) Who come from environments in which a language other than English is dominant; or

(D) Who are American Indian and Alaskan Natives and come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(ii) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these students the opportunity to learn successfully in classrooms in which English is the language of instruction, or to participate fully in society.

Participating State means a State that has submitted a grant application that has been approved by the Secretary under this program.

Preschool-age children means children who are younger than the age at which their State of residence provides elementary education.

Present and projected teacher shortage and surplus areas means present and projected teacher shortage and surplus areas in a State, as determined by the State on the basis of the demand for and supply of qualified early childhood, elementary, and secondary teachers in the State and the demand for and supply of teachers with training in specific academic disciplines.

Principal means a school principal or the principal's designee.

Related services has the meaning given that term in section 602(a)(17) of the Individuals with Disabilities Education Act.

Rural means any area that is outside an urbanized area, as defined by the Bureau of the Census, and outside any place, incorporated or Bureau of the Census designated, having a population of 2,500 or more.

Scholar means an individual who is selected as a Paul Douglas Teacher Scholar.

Scholarship means an award made to a scholar under this part.

School-age population means the population ages 5 to 17.

Students from low-income backgrounds means students from families whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of Census of the U.S. Department of Commerce.

Students with disabilities has the meaning given the term "children with disabilities" in section 602(a)(1) of the Individuals with Disabilities Education Act.

Students who are from disadvantaged backgrounds means students--

(i) From low-income backgrounds;

(ii) Who are ethnic or racial minorities; or

(iii) With disabilities.

Teach on a full-time basis means teach the same number of hours required of teachers who have full-time contracts, as determined by the institution or agency in which an individual is teaching, for a minimum of one academic term, as defined by the institution or agency in which an individual is teaching.

(Authority: 20 U.S.C. 1104 et seq., 1141)

Subpart B--How Does a State Apply for a Grant?

Sec. 653.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit an application to the Secretary--for review and approval--by the deadline announced annually by the Secretary in the **Federal Register**.

(b) On the Secretary's approval of its initial grant application for fiscal year 1993 or thereafter, a State need not submit new applications to be considered for funding under this program in subsequent years, except that any changes in the State's program must be incorporated in a revised application which must be submitted to the Secretary for approval.

(Authority: 20 U.S.C. 1104b)

Sec. 653.11 What is the content of a grant application?

A State's grant application must--

(a) Identify--

(1) The State agency responsible for administering this program (SA), which must be--

(i) The State agency that administers the State Student Incentive Grants Program under title IV, part A, subpart 4 of the HEA;

(ii) The State agency that administers the Federal Family Education Loan Program and with which the Secretary has an agreement under section 428(b) of the HEA; or

(iii) Any other appropriate State agency approved by the Secretary; and

(2) The composition of the selection panel responsible for selecting scholars under this program, which must be--

(i)(A) A seven-member statewide panel appointed by the chief State elected official acting in consultation with the State education agency (SEA); or

(B) An existing grant agency or panel designated by the chief State elected official and approved by the Secretary; and

(ii) Representative of school administrators, teachers, including preschool and special education teachers, and parents;

(b) Describe a program of activities for carrying out the purposes of this program in accordance with the requirements of this part, including--

(1) The criteria and procedures the selection panel plans to use to select eligible scholars, including an explanation of how the criteria and procedures meet the requirements of Sec. 653.42; and

(2) The criteria and procedures the SA plans to use to--

(i) Publicize the availability of scholarships to secondary school students in the State;

(ii) Notify scholars of their selection; and

(iii) Inform scholars annually, on disbursement of the scholarship funds, of--

(A) The State's present and projected teacher shortage and surplus areas; and

(B) The federally approved teacher shortage areas within the State;

(iv) Monitor the continuing eligibility of scholars;

(v) Disburse scholarship funds;

(vi) Collect funds improperly disbursed;

(vii) Monitor scholars' compliance with the teaching obligation requirements; and

(viii) Administer the repayment provisions under Sec. 653.62;

(c) Provide a copy of--

(1) The scholarship application form, which must disclose the terms and conditions of the scholarship agreement; and

(2) The scholarship agreement form, containing the terms and conditions provided in Sec. 653.50; and

(d) Provide assurances that--

(1) The selection panel--

(i) Is representative of administrators, teachers (including preschool and special education teachers), and parents, as required by paragraph (a)(2)(ii) of this section; and

(ii) Will select scholars who are eligible under Sec. 653.41; and

(2) The SA will--

(i) Comply with the criteria and procedures described in the State's approved grant application;

(ii) Submit for the Secretary's prior written approval any changes in the criteria and procedures described in its approved grant application;

(iii) Make particular efforts to attract students from low-income backgrounds, ethnic and racial minority students,

students with disabilities, students from groups historically underrepresented in teaching, students who express a willingness or desire to teach in rural schools, urban schools, or schools having less than average academic results or serving large numbers of economically disadvantaged students, or women or minority students who show interest in pursuing teaching careers in mathematics and science and who are underrepresented in those fields;

(iv) Disburse no scholarship funds to scholars who do not meet the requirements of Sec. 653.51;

(v) Expend the funds it receives under this program only as provided in Sec. 653.3;

(vi) Cooperate with the Secretary in any evaluation of its project; and

(vii) Provide the Secretary with any program information or reports required by the Secretary.

(Authority: 20 U.S.C. 1104b, 1104d, 1104i)

Subpart C--How Does the Secretary Make a Grant to a State?

Sec. 653.20 How does the Secretary approve a grant application?

The Secretary approves a grant application if it contains all of the information and assurances required in Sec. 653.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1104b)

Sec. 653.21 How does the Secretary determine the amount of a grant to a State?

From the funds appropriated for this program, the Secretary determines the amount of the grant to each participating State on the basis of the ratio of the school-age population in that State compared to the school-age population in all participating States. The Secretary determines the number of persons in a State on the basis of the most recently available data from the Bureau of the Census.

(Authority: 20 U.S.C. 1104a)

Subpart D--How Does a Student Apply for a Scholarship?

Sec. 653.30 What must a student do to apply for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SA in the student's State of legal residence.

(Authority: 20 U.S.C. 1104d)

Sec. 653.31 Where does a student obtain an application?

The SEA shall make applications available to high schools in the State and in other locations convenient to students, parents, and other interested parties.

(Authority: 20 U.S.C. 1104d)

Subpart E--How Does a State Select Scholars?

Sec. 653.40 How does the selection panel select scholars?

The selection panel identified by a State in its grant application, as provided in Sec. 653.11(a)(2), shall select scholars from among students who meet the eligibility criteria in Sec. 653.41 on the basis of selection criteria and procedures developed in accordance with Sec. 653.42.

(Authority: 20 U.S.C. 1104d)

Sec. 653.41 Who is eligible to be selected as a scholar?

A student is eligible to be selected as a scholar under this program only if he or she--

(a)(1) Is a United States citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she--

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen, or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(b)(1) Has graduated from secondary school;

(2) Is scheduled to graduate from secondary school by the end of the school term in which the award is made; or

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(3) Has received a certificate of high school equivalency for successfully completing the General Educational Development (GED) test;

(c)(1) Ranks in the top 10 percent of his or her graduating class; or

(2) Has received GED test scores that the State recognizes as equivalent to ranking in the top 10 percent of the secondary school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made;

(d) Is not ineligible to receive assistance as a result of default on a Federal student loan or otherwise, as provided under 34 CFR 75.60-75.62; and

(e) Intends to pursue a teaching career at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104, 1104d)

Sec. 653.42 What are the selection criteria and procedures?

(a) The SEA shall develop the selection criteria and procedures in cooperation with the State higher education agency and in consideration of the views of local educational agencies (LEAs), private educational institutions, and other interested parties.

(b)(1) The State shall solicit the views of LEAs, private educational institutions, and other interested parties by--

(i) Written comments; and

(ii) Publication of proposed selection criteria and procedures prior to implementation.

(2) The State may also solicit views by--

(i) Public hearings on the teaching needs of elementary and secondary schools in the State (including the number of new teachers needed, the expected supply of new teachers, and the shortages in the State of teachers with specific preparation); or

(ii) Other methods, provided that the SEA documents these methods and the views obtained through these methods.

(c) The selection criteria and procedures developed in accordance with paragraphs (a) and (b) of this section must be designed to--

(1) Ensure that scholars meet the eligibility requirements in Sec. 653.41;

(2) Address the present and projected teacher shortage areas of the State;

(3) Select scholars without regard to whether they plan to attend publicly or privately controlled institutions; and

(4)(i) Select at least 75 percent of the scholars on the basis of selection criteria that include criteria to give special consideration to students who--

(A) Intend to teach or provide related services to students with disabilities;

(B) Intend to teach limited English proficient students;

(C) Intend to teach preschool-age children;

(D) Intend to teach in schools serving inner city, rural, or geographically isolated areas;

(E) Intend to teach in curricular areas or geographic areas that are present teacher shortage areas; or

(F) Are from disadvantaged backgrounds and from groups historically underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach; and

(ii) Select the remaining scholars on the basis of the same selection criteria used to select scholars under paragraph (c)(4)(i) of this section, except that the special consideration criteria may be excluded.

(Authority: 20 U.S.C. 1104b, 1104d)

Subpart F--What are the Scholarship Conditions?

Sec. 653.50 What agreement must a scholar have with the State Agency?

(a) To receive scholarship funds, a scholar must enter into an agreement with the SA under which he or she agrees to--

(1) Pursue a course of study leading to certification as a teacher at the preschool, elementary, or secondary level;

(2) Teach on a full-time basis for a period of not less than--

(i) Two years for each year for which scholarship assistance is received in a public or private nonprofit preschool, elementary school, or secondary school in any State, including a private nonprofit school that serves students with disabilities or limited English proficient students; or

(ii) One year for each year for which scholarship assistance is received in a federally approved teacher shortage area;

(3) Fulfill the teaching obligation described in paragraph (a)(2) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(4) Provide the SA with the evidence of compliance with paragraph (a)(2) of this section that is required under Sec. 653.61, and with evidence of compliance with paragraphs (a)(1) and (3) of this section and Sec. 653.51(a) as required by the SA.

(5) Repay all or part of the scholarship plus interest and reasonable collection fees, if applicable, as specified in Sec. 653.62, if the SA determines that the conditions of paragraph (a)(1), (2), or (3) of this section are not met; and

(6) Provide scholarship information, as requested by the Secretary, for an evaluation of this program.

(b) The agreement must include a description of the procedures under which--

(1) The provisions of Sec. 653.62(g) through (k) will be implemented; and

(2) A scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1104b)

Sec. 653.51 What are the requirements for a scholar to receive scholarship payments?

(a) Except as provided in paragraph (b) of this section, the SA shall disburse $5,000 per academic year for a maximum of four academic years to each scholar who--

(1) Is selected in accordance with the criteria established under Sec. 653.42;

(2) Signs a scholarship agreement in accordance with Sec. 653.50;

(3) Is enrolled as a full-time student in an institution of higher education;

(4) Is pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the SA, but not including graduate study that is not required for initial teacher certification; and

(5) Is maintaining satisfactory progress toward a degree, or, if the student already has a degree, toward teacher certification, as determined by the institution of higher education the student is attending.

(b)(1) In no case may a student receive a scholarship under this program that exceeds the cost of attendance at the institution in which the scholar is enrolled.

(2) A scholarship awarded under this part may not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but must be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(Authority: 20 U.S.C. 1104c, 1104e)

Subpart G--What Post-Award Conditions Must Be Met by State Agencies and Scholars?

Sec. 653.60 What requirements must a State Agency meet in the administration of this program?

(a) To receive payments under this program, an SA must--

(1) Comply with the criteria, procedures, and assurances in the State's approved grant application;

(2) Disburse scholarship funds in accordance with Sec. 653.51;

(3) Collect any scholarship funds improperly disbursed;

(4) Comply with all requests from the Secretary for reports or information necessary to carry out the Secretary's functions under this part.

(5) Establish and implement policies and procedures that are necessary to administer the repayment provisions of Sec. 653.62 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(6) Except as provided in paragraph (b) of this section, expend in each award year all--

(i) Scholarship funds received from the Secretary for that award year; and

(ii) Funds received prior to that award year for principal and interest payments collected under the provisions of Sec. 653.62.

(b) After awarding all scholarships for payment during an award year, as required by paragraph (a)(6) of this section, an SA may reserve for expenditure in the following award year any remaining amount of funds that is less than the amount required for a scholarship, as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1104b, 1104f, 1104i)

Sec. 653.61 How does a scholar fulfill the teaching obligation under this program?

(a) To fulfill the teaching obligation required under Sec. 653.50(a)(2), a scholar must provide to the SA in the State from which he or she received scholarship funds a statement from the principal of the public or nonprofit private preschool, elementary, or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher.

(b) To qualify for a reduction in the teaching obligation for teaching in a federally approved shortage area, as provided under Sec. 653.50(a)(2)(ii)--

(1) A scholar who is teaching in the same State from which he or she received scholarship funds must provide to the SA in that State a statement certifying that the scholar is teaching in a federally approved teacher shortage area, as determined by the SA; and

(2) A scholar who is teaching in a State other than the one from which he or she received scholarship funds must do one of the following:

(i) If the scholar is teaching in a State in which the chief State school officer has complied with paragraph (c) of this section and provides an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's principal.

(ii) If a scholar is teaching in a State in which the chief State school officer has not complied with paragraph (c) of this section or does not provide an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar must obtain certification that he or she is teaching in a teacher shortage area from the chief State school officer for the State in which the scholar is teaching.

(c) For a scholar to obtain a certification under paragraph (b)(2)(i) of this section, the State's chief state school officer must previously have notified the Secretary, by means of a one-time written assurance, that he or she provides annually a listing of the federally approved teacher shortage areas to the principals in the State whose schools are affected.

(d) If a scholar who receives a reduction in his or her teaching obligation continues to teach in the same area in which he or she was teaching when the teaching obligation was originally reduced, the scholar continues to qualify for the reduction in the teaching obligation even if the area ceases to be designated a teacher shortage area on the federally approved list, provided that the scholar provides the SA with a statement from the principal of the school in which he or she is teaching, certifying that the scholar continues to be employed as a full-time teacher in the same area in which he or she was teaching when the teaching obligation was originally reduced.

(Authority: 20 U.S.C. 1104b, 1104j)

Sec. 653.62 What are the consequences of a scholar's noncompliance with the scholarship agreement?

(a) A scholar found by an SA to be in noncompliance with the agreement entered into under Sec. 653.50 shall--

(1) Repay the amount of scholarship funds received, prorated according to the fraction of the teaching obligation not completed, as determined by the SA in accordance with paragraph (b) of this section;

(2) Pay a simple, per annum interest charge on the outstanding principal, as determined by the SA in accordance with paragraph (c) of this section; and

(3) Pay all reasonable collection costs as determined by the SA, in accordance with 34 CFR part 682.

(b) A scholar required by paragraph (a) of this section to repay his or her scholarship shall--

(1) Enter repayment status on the first day of the first calendar month after--

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed since the scholar was enrolled full-time in a course of study;

(ii) The date the scholar informs the SA that he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the SA; and

(2) Make monthly or quarterly payments to the SA that--

(i) Cover principal, interest, and collection costs according to a schedule established by the SA that calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (b)(2)(ii) of this section; and

(ii) Amount annually to no less than $1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the SA's satisfaction.

(c) The interest charge referred to in paragraph (a)(2) of this section accrues from--

(1) The date of the initial scholarship payment if the SA has determined that the scholar--

(i) Is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(ii) Completed a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but never taught; or

(2) The day after the last day of the scholarship period for which the teaching obligation has been fulfilled.

(d)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year and is set at a rate that is the greater of the following rates established pursuant to section 427A of the HEA for the same twelve-month period:

(i) The rate charged to new borrowers under the Robert T. Stafford Federal Student Loan Program (title IV, part B of the HEA).

(ii) The rate charged to new borrowers under the Federal Supplemental Loans for Students and Federal PLUS Programs (sections 428A and 428B of the HEA, respectively) as published annually in the **Federal Register**.

(2) For a scholar required to repay his or her scholarship--

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (c) of this section) until the date on which the scholar's repayment period begins (determined in accordance with paragraph (b) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (d)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (d)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

(e) The SA may not require a scholar to make repayments amounting to more than $1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (b)(2) of this section.

(f) The SA shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (b) of this section during the time he or she is--

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving on active duty as a member of the armed services of the United States, or serving as a member of VISTA or the Peace Corps, for a period not in excess of three years;

(3) Temporarily totally disabled, as established by the sworn affidavit of a qualified physician, for a period not in excess of three years;

(4) Unable to secure employment by reason of the care required by a disabled child, spouse, or parent for a period not in excess of twelve months;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the SA under paragraph (b)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary school, or secondary school for a single period not to exceed 27 months.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar must notify the SA of his or her claim to the exception and provide supporting documentation as required by the SA.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he of she need not make the scholarship repayments required by paragraph (b) of this section and interest does not accrue.

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(j) The SA shall extend the ten-year scholarship repayment period established under paragraph (b) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the SA's satisfaction.

(k) The SA shall cancel a scholar's repayment obligation if it determines that--

(1) The scholar is unable to teach on a full-time basis because he or she is permanently totally disabled, on the basis of a sworn affidavit of a qualified physician; or

(2) The scholar has died, on the basis of a death certificate or other evidence conclusive under State law.

(Authority: 20 U.S.C. 1104f, 1104g)

PART 654--ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A--General

Sec.

654.1 What is the Robert C. Byrd Honors Scholarship Program?

654.2 Who is eligible for an award?

654.3 What kind of activity may be assisted?

654.4 What regulations apply?

654.5 What definitions apply?

Subpart B--How Does a State Apply for a Grant?

654.10 What must a State do to apply for a grant?

654.11 What is the content of a participation agreement?

Subpart C--How Does the Secretary Make a Grant to a State?

654.20 How does the Secretary approve a participation agreement?

654.21 How does the Secretary determine the amount of the grant to each participating State?

Subpart D--How Does a Student Apply to an SEA for a Scholarship?

654.30 How does a student apply to an SEA for a scholarship?

Subpart E--How Does an SEA Select an Eligible Student to Be a Scholar?

654.40 Who is an eligible student?

654.41 What are the selection criteria and procedures?

Subpart F--How Does a Scholar Receive Scholarship Payments?

654.50 How does an SEA disburse scholarship funds?

654.51 What are the continuing eligibility criteria?

654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

Subpart G--What Post-Award Conditions Must an SEA Meet?

654.60 What requirements must an SEA meet in the administration of this program?

Authority: 20 U.S.C. 1070d-31 to 1070d-41, unless otherwise noted.

Subpart A--General

654.1 What is the Robert C. Byrd Honors Scholarship Program?

Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes grants to the States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

(Authority: 20 U.S.C. 1070d-31, 1070d-33)

654.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in 654.40 and 654.51 are eligible for scholarships under this program.

(Authority: 20 U.S.C. 1070d-33, 1070d-36)

654.3 What kind of activity may be assisted?

A State may use its funds under this program, including funds collected from scholars under 654.60(a)(3), only to make scholarship payments to scholars.

(Authority: 20 U.S.C. 1070d-35, 1070d-38)

654.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60-75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 654.

(Authority: 20 U.S.C. 1070d-31 et seq.)

654.5 What definitions apply?

(a) *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Private
Public
Secretary
State
State educational agency

(b) *Other definitions*. The following definitions also apply to this part:

Award year means the period of time from July 1 of one year through June 30 of the following year.

Cost of attendance has the meaning given that term in section 472 of the HEA.

Full-time student means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.

HEA means the Higher Education Act of 1965, as amended.

High school graduate means an individual who has--

(i) A high school diploma;

(ii) A General Education Development (GED) Certificate; or

(iii) Any other evidence recognized by the State as the equivalent of a high school diploma.

Institution of higher education means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution, as defined in section 481 of the HEA.

Participating State means a State that has submitted a participation agreement that has been approved by the Secretary.

Scholar means an individual who is selected as a Byrd Scholar.

Scholarship means an award made to a scholar under this part.

Secondary school year means the period of time during which a secondary school is in session, as determined by State law.

Year of study means the period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one year of course work, as defined by the institution.

(Authority: 20 U.S.C. 1070d-31 et seq., 20 U.S.C. 1088)

Subpart B--How Does a State Apply for a Grant?

654.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit a participation agreement to the Secretary for review and approval by the deadline announced annually by the Secretary in the **Federal Register**.

(b) On the Secretary's approval of its initial participation agreement for fiscal year 1993 or thereafter, a State need not submit a new participation agreement to be considered for funding under this program any changes in the State's criteria and procedures must be incorporated in a revised participation agreement which must be submitted to the Secretary for review and approval.

(Authority: 20 U.S.C. 1070d-35)

(Approved by the Office of Management and Budget under control number 1840-0612)

654.11 What is the content of a participation agreement?

A State's participation agreement must include the following:

(a) A Description of the criteria and procedures that the State, through its State educational agency (SEA), plans to use to administer this program in accordance with the requirements of this part, including the criteria and procedures it plans to use to--

(1) Publicize the availability of Byrd scholarships to students in the State, with particular emphasis on procedures designed to ensure that students from low- and moderate-income families know about their opportunity for participation in the program;

(2) Select eligible students;

(3) Notify scholars of their selections and scholarship awards;

(4) Monitor the continuing eligibility of scholars;

(5) Disburse scholarship funds in accordance with the requirements of Sec. 654.50; and

(6) Collect scholarship funds improperly disbursed.

(1) Comply with the criteria and procedures in its approved participation agreement;

(2) Submit for the prior written approval of the Secretary any changes in the criteria and procedures in the approved participation agreement; and

(3) Expend the payments it receives under this program only as provided in Sec. 654.3.

(Authority: 20 U.S.C. 1070d-35 to 1070d-38)

(Approved by the Office of Management and Budget under control number 1840-0612)

Subpart C--How Does the Secretary Make a Grant to a State?

654.20 How does the Secretary approve a participation agreement?

The Secretary approves a participation agreement if it contains all of the information and assurances required in Sec. 654.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1070d-31 et seq.)

654.21 How does the Secretary determine the amount of the grant to each participating State?

(a) From the funds appropriated for this program, the Secretary allots to each participating State a grant equal to $1,500 multiplied by the number of scholarships the Secretary determines to be available to that State on the basis of the formula described in paragraph (b) of this section.

(b) The number of scholarships that the Secretary allots to each participating State for any fiscal year bears the same ratio to the number of scholarships allotted to all participating States as each State's population ages 5 through 17 which is derived from the most recently available data from the U.S. Bureau of the Census bears to the population ages 5 through 17 in all participating States, except that--

(1) Not fewer than 10 scholarships are allotted to any participating State; and

(2) The District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands (Palau) each are allotted 10 scholarships.

(Authority: 20 U.S.C. 1070d-34, 1070d-37)

Subpart D--How does a Student Apply to an SEA for a Scholarship?

654.30 How does a student apply to an SEA for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SEA in the student's State of legal residence.

(Authority: 20 U.S.C. 1070d-37)

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Subpart E--How does an SEA Select an Eligible Student to be a Scholar?

654.40 Who is an eligible student?

A Student is eligible to be selected as a scholar if he or she--

(a) Is a legal resident of the State to which he or she is applying for a scholarship;

(b)(1) Is a U.S. citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she--

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(c) Becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application;

(d) Has applied or been accepted for enrollment as a full-time student at an institution of higher education;

(e) Is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 CFR 75.60; and

(f) Files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 CFR 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending.

(Authority: 20 U.S.C. 1070d-36, 50 U.S.C. App. 462, 20 U.S.C. 1091)

654.41 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars, in accordance with the requirements of this part, after consultation with school boards, teachers, counselors, and parents.

(b) The SEA shall establish the selection criteria and procedures to ensure that it selects scholars--

(1) Who are eligible students under the criteria provided in Sec. 654.40;

(2) Who have demonstrated outstanding academic achievement and show promise of continued achievement;

(3) In a manner that ensures an equitable geographic distribution of awards within the State; and

(4) Without regard to--

(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;

(ii) Whether the institution of higher education each scholar plans to attend is public or private or is within or outside the scholar's State of legal residence;

(iii) Race, color, national origin, sex, religion, disability, or economic background; and

(iv) The scholar's educational expenses or financial need.

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-37)

(Approved by the Office of Management and Budget under control number 1840-0612)

Subpart F--How Does a Scholar Receive Scholarship Payments?

654.50 How does an SEA disburse scholarship funds?

(a) Except as provided in paragraph (b) of this section, the SEA shall disburse $1,500 for each year of study for a maximum of four years of study to each scholar who--

(1) Is selected in accordance with the criteria established under Sec. 654.41; and

(2) Meets the requirements for continuing eligibility under Sec. 654.51.

(b)(1) The SEA shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance.

(2) The SEA shall ensure that loans are reduced prior to reducing a scholarship awarded under this program.

(c) The SEA shall ensure that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.

(Authority: 20 U.S.C. 1070d-38)

654.51 What are the continuing eligibility criteria?

(a) A scholar continues to be eligible for scholarship funds as long as the scholar continues to--

(1) Meet the eligibility requirements in Sec. 654.40(b), (e), and (f);

(2) Be enrolled as a full-time student at an institution of higher education except as provided in paragraph (b) of this section; and

(3) Maintain satisfactory progress as determined by the institution of higher education the scholar is attending, in accordance with the criteria established in 34 CFR 668.14(e) of the Student Assistance General Provisions regulations.

(b) In order to be eligible for scholarship funds, a scholar must be enrolled full time for the first year of study. If after the first year of study the SEA determines that unusual circumstances justify waiver of the full-time attendance requirement, the scholar may enroll part time and continue to receive a scholarship payment. The SEA shall prorate the payment according to the scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a scholar for whom the full-time enrollment requirement is waived by the SEA is enrolled as a half-time student for one semester, he or she is eligible to receive one-quarter of his or her scholarship during that semester.

(Authority: 20 U.S.C. 1070d-33, 1070d-36)

654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

(a)(1) An SEA may permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

(2) A scholar who postpones or interrupts his or her enrollment at an institution of higher education in accordance with standards established by the SEA is not eligible to receive scholarship funds during the period of postponement or interruption, but is eligible to receive scholarship payments on enrollment or re-enrollment at an institution of higher education.

(3) A scholar's periods of postponement or interruption, taken in accordance with standards established by the SEA and not in excess of 12 months, are not considered periods of suspension for the purposes of calculating the 12 months provided for suspension prior to termination under paragraph (b)(2) of this section.

(b)(1) Except as provided in paragraph (a) of this section, if an SEA finds that a scholar fails to meet the requirements of 654.51 within an award year, it shall suspend the scholar's eligibility to receive scholarship funds until the scholar is able to demonstrate to the satisfaction of the SEA that he or she meets these requirements.

(2) Except as provided in paragraph (b)(3) of this section, a scholar's eligibility for a scholarship is terminated when the total of his or her suspension periods exceeds 12 months.

(3) In exceptional circumstances, the SEA may extend the 12-month suspension period without terminating a scholar's eligibility under paragraph (b)(2) of this section, in accordance with standards established by the SEA.

(c) A scholar who receives an award for a period for which the SEA subsequently determines the scholar was ineligible under the requirements in 654.40 or 654.51 shall repay to the SEA the total amount of the scholarship funds received for the period during which he or she was ineligible.

(Authority: 20 U.S.C. 1070d-35, 1070d-36 to 1070d-38)

Subpart G--What Post-Award Conditions Must an SEA Meet?

654.60 What requirements must an SEA meet in the administration of this program?

(a) To receive and continue to receive payments under this part, an SEA shall--

(1) Comply with the criteria, procedures, and assurances in its approved participation agreement;

(2) Disburse the scholarship funds in accordance with 654.50 to the scholar, the institution of higher education in which the scholar enrolls, or copayable to the scholar and the institution of higher education in which the scholar enrolls;

(3) Collect any scholarship funds improperly disbursed under 654.50;

(4) Make reports to the Secretary that the Secretary deems necessary to carry out the Secretary's functions under this part; and

(5) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary for those funds.

(b) After awarding all scholarship funds during an award year, as required by paragraph (a)(5) of this section, an

SEA may retain any funds that are subsequently returned or collected for scholarship awards in the following award period.

(Authority: 20 U.S.C. 1070d-33, 1070d-35)

(Approved by the Office of Management and Budget under control number 1640-0612)

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart A--General

Sec.

668.1 Scope.

668.2 General definitions.

668.3 Reductions in the length of an academic year.

668.4 Payment period.

668.5 through 668.7 [Reserved]

668.8 Eligible program.

668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

Subpart B--Standards for Participation in Title IV, HEA Programs

668.11 Scope.

668.12 Application procedures.

668.13 Certification procedures.

668.14 Program participation agreement.

668.15 Factors of financial responsibility.

668.16 Standards of administrative capability.

668.17 Default reduction and prevention measures.

668.18 [Removed and Reserved]

668.19 Financial aid transcript.

668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

668.21 Treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

668.22 Institutional refunds and repayments.

668.23 Compliance audits and audited financial statements.

668.24 Record retention and examinations.

668.25 Contracts between an institution and a third-party servicer.

668.26 End of an institution's participation in the Title IV, HEA programs.

Subpart C--Student Eligibility

668.31 Scope.

668.32 Student eligibility - general.

668.33 Citizenship and residency requirements.

668.34 Satisfactory progress.

668.35 Student debts under the HEA and to the U.S.

668.36 Social security number.

668.37 Selective Service registration.

668.38 Enrollment in telecommunications and correspondence courses.

668.39 Study abroad programs.

Subpart D--Student Consumer Information Services

668.41 Reporting and disclosure of information.

668.42 Preparation and dissemination of materials.

668.43 Financial assistance information.

668.44 Institutional information.

668.45 Availability of employees for information dissemination purposes.

668.46 Information on completion or graduation rates.

668.47 Institutional security policies and crime statistics.

668.48 Report on athletic program participation rates and financial support data.

668.49 Report on completion or graduation rates for student-athletes.

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart E--Verification of Student Aid Application Information

668.51 General.

668.52 Definitions.

668.53 Policies and procedures.

668.54 Selection of applications for verification.

668.55 Updating information.

668.56 Items to be verified.

668.57 Acceptable documentation.

668.58 Interim disbursements.

668.59 Consequences of a change in application information.

668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

668.61 Recovery of funds.

Subpart F--Misrepresentation

668.71 Scope and special definitions.

668.72 Nature of educational program.

668.73 Nature of financial charges.

668.74 Employability of graduates.

668.75 Procedures.

Subpart G--Fine, Limitation, Suspension and Termination Proceedings

668.81 Scope of special definitions.

668.82 Standard of conduct.

668.83 Emergency action.

668.84 Fine proceedings.

668.85 Suspension proceedings.

668.86 Limitation or termination proceedings.

668.87 Prehearing conference.

668.88 Hearing.

668.89 Authority and responsibilities of the hearing official.

668.90 Initial and final decisions.

668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

668.92 Fines.

668.93 Limitation.

668.94 Termination.

668.95 Reimbursements, refunds and offsets.

668.96 Reinstatement after termination.

668.97 Removal of limitation.

668.98 Interlocutory appeals to the Secretary from rulings of a hearing official.

Subpart H--Appeal Procedures for Audit Determinations and Program Review Determinations

668.111 Scope and purpose.

668.112 Definitions.

668.113 Request for review.

668.114 Notification of hearing.

668.115 Prehearing conference.

668.116 Hearing.

668.117 Authority and responsibilities of the hearing official.

668.118 Decision of the hearing official.

668.119 Appeal to the Secretary.

668.120 Decision of the Secretary.

668.121 Final decision of the Department.

668.122 Determination of filing, receipt, and submission dates.

668.123 Collection.

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

Subpart I--Immigration-Status Confirmation

668.130 General.

668.131 Definitions.

668.132 Institutional determinations of eligibility based on primary confirmation.

668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.

668.135 Institutional procedures for completing secondary confirmation.

668.136 Institutional determinations of eligibility based on INS responses to secondary confirmation requests.

668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

668.138 Liability.

668.139 Recovery of payments and loan disbursements to ineligible students.

Subpart J--Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

668.141 Scope.

668.142 Special definitions.

668.143 Approval of State tests or assessments.

668.144 Application for test approval.

668.145 Test approval procedures.

668.146 Criteria for approving tests.

668.147 Passing score.

668.148 Additional criteria for the approval of certain tests.

668.149 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available.

668.150 Agreement between the Secretary and a test publisher.

668.151 Administration of tests.

668.152 Administration of tests by assessment centers.

668.153 Administration of tests for students whose native language is not English or for persons with disabilities.

668.154 Institutional accountability.

668.155 Transitional rule for the 1996-97 award year.

668.156 Approved State process.

Subpart K--Cash Management

668.161 Scope and purpose.

668.162 Requesting funds.

668.163 Maintaining and accounting for funds.

668.164 Disbursing funds.

668.165 Notices and authorizations.

668.166 Excess cash.

668.167 FFEL Program funds.

Subpart L--Financial Responsibility

668.171 General.

668.172 Financial ratios.

668.173 Refund reserve standards.

668.174 Past performance.

668.175 Alternative standards and requirements.

Appendix A--Flow Charts for Procedures for Calculating Refunds Under Sec. 668.22

Appendix B--Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Appendix C--Appendix I, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Appendix D--Default Reduction Measures

Appendix E--Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

Appendix F--Ratio Methodology for Proprietary Institutions

Appendix G--Ratio Methodology for Private Non-Profit Institutions

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

Subpart A--General

Sec. 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

(b) As used in this part, an "institution" includes--

(1) An institution of higher education as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education as defined in 34 CFR 600.5; and

(3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include--

(1) The Federal Pell Grant Program (20 U.S.C. 1070a et seq.; 34 CFR part 690);

(2) The National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a-21 et seq.; 34 CFR part 693);

(3) The Presidential Access Scholarship (PAS) Program (20 U.S.C. 1070a-31 et seq.; 34 CFR part 691);

(4) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b et seq.; 34 CFR parts 673 and 676);

(5) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c et seq.; 34 CFR part 692);

(6) The Federal Stafford Loan Program (20 U.S.C. 1071 et seq.; 34 CFR part 682);

(7) The Federal Supplemental Loans for Students (Federal SLS) Program (20 U.S.C. 1078-1; 34 CFR part 682);

(8) The Federal PLUS Program (20 U.S.C. 1078-2; 34 CFR part 682);

(9) The Federal Consolidation Loan Program (20 U.S.C. 1078-3; 34 CFR part 682);

(10) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 et seq.; 34 CFR parts 673 and 675);

(11) The Federal Direct Student Loan (FDSL) Program (20 U.S.C. 1087a et seq.; 34 CFR part 685); and

(12) The Federal Perkins Loan Program (20 U.S.C. 1087aa et seq.; 34 CFR parts 673 and 674).

(Authority: 20 U.S.C. 1070 et seq.)

Note: (b) amended July 31, 1991, effective September 14, 1991. (c)(4) and (c)(7) amended June 8, 1993, effective July 23, 1993. (a), (b)(2), (b)(3), and (c) amended and (b)(4) removed April 29, 1994, effective July 1, 1994. (c)(4), (c)(10), and (c)(12) amended November 27, 1996, effective July 1, 1997.

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

Sec. 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as Amended, 34 CFR part 600:

Accredited
Award year
Branch campus
Clock hour
Correspondence course
Educational program
Eligible institution
Federal Family Education Loan (FFEL) programs
Incarcerated student
Institution of higher education
Legally authorized
Nationally recognized accrediting agency
Nonprofit institution
One-year training program
Postsecondary vocational institution
Preaccredited
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Recognized occupation
Regular student
Secretary
State
Telecommunications course

(b) The following definitions apply to all Title IV, HEA programs:

Academic year: (1) A period that begins on the first day of classes and ends on the last day of classes or examinations and that is a minimum of 30 weeks (except as provided in Sec. 668.3) of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least--

(i) Twenty-four semester or trimester hours or 36 quarter hours in an educational program whose length is measured in credit hours; or

(ii) Nine hundred clock hours in an educational program whose length is measured in clock hours.

(2) For purposes of this definition--

(i) A week is a consecutive seven-day period;

(ii)(A) For an educational program using a semester, trimester, or quarter system or an educational program using clock hours, the Secretary considers a week of instructional time to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs; and

(B) For an educational program using credit hours but not using a semester, trimester, or quarter system, the Secretary considers a week of instructional time to be any week in which at least 12 hours of regularly scheduled instruction, examinations, or preparation for examinations occurs; and

(iii) Instructional time does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(Authority: 20 U.S.C. 1088)

Campus-based programs: (1) The Federal Perkins Loan Program (34 CFR parts 673 and 674);

(2) The Federal Work-Study (FWS) Program (34 CFR parts 673 and 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR parts 673 and 676).

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

Dependent student: Any student who does not qualify as an independent student (see Independent student).

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

Direct loan: A loan made under Title IV-E of the HEA after June 30, 1972, that does not satisfy the definition of "Federal Perkins loan."

(Authority: 20 U.S.C. 1087aa et seq.)

Enrolled: The status of a student who--

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or

(2) Has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

Federal Consolidation Loan program: The loan program authorized by Title IV-B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect before October 17, 1986), Federal SLS, ALAS (as in effect before October 17, 1986), Federal Direct Student Loan, and Federal Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act, for parent Federal PLUS borrowers whose loans were made after October 17, 1986, and for Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Public Health Services Act.

(Authority: 20 U.S.C. 1078-3)

Federal Direct PLUS loan: A Federal PLUS loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1078-2 and 1087a et seq.)

Federal Direct Stafford loan: A Federal Stafford loan made under the Federal Direct Student Loan Program.

(Authority: 20 U.S.C. 1071 et seq. and 1087a et seq.)

Federal Direct Student loan: A loan made under Title IV-D of the HEA after August 10, 1993.

(Authority: 20 U.S.C. 1087a et seq.)

Federal Direct Student Loan (FDSL) program: The student loan program authorized on July 23, 1992, by Title IV-D of the HEA.

(Authority: 20 U.S.C. 1087a et seq.)

Federal Pell Grant Program: The grant program authorized by Title IV-A-1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Federal Perkins loan: A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa et seq.)

Federal Perkins Loan program: The student loan program authorized by Title IV-E of the HEA after October 16, 1986. Unless otherwise noted, as used in this part, the Federal Perkins Loan Program includes the National Direct Student Loan Program and the National Defense Student Loan Program.

(Authority: 20 U.S.C. 1087aa-1087ii)

Federal PLUS loan: A loan made under the Federal PLUS Program.

(Authority: 20 U.S.C. 1078-2)

Federal PLUS program: The loan program authorized by Title IV-B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(Authority: 20 U.S.C. 1078-2)

Federal SLS loan: A loan made under the Federal SLS Program.

(Authority: 20 U.S.C. 1078-1)

Federal Stafford loan: A loan made under the Federal Stafford Loan Program.

(Authority: 20 U.S.C. 1071 et seq.)

Federal Stafford Loan program: The loan program authorized by Title IV-B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

(Authority: 20 U.S.C. 1071 et seq.)

Federal Supplemental Educational Opportunity Grant (FSEOG) program: The grant program authorized by Title IV-A-2 of the HEA.

(Authority: 20 U.S.C. 1070b et seq.)

Federal Supplemental Loans for Students (Federal SLS) program: The loan program (formerly called the ALAS Program) authorized by Title IV-B, section 428A, of the HEA that encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078-1)

Federal Work Study (FWS) program: The part-time employment program for students authorized by Title IV-C of the HEA.

(Authority: 42 U.S.C. 2751-2756b)

FFELP loan: A loan made under the FFEL programs.

(Authority: 20 U.S.C. 1071 et seq.)

Full-time student: An enrolled student who is carrying a full-time academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) Twelve semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system.

(2) Twenty-four semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) Twenty-four clock hours per week for an educational program using clock hours.

(4) In an educational program using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

(i) For a program using a semester, trimester, or quarter system--

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(ii) For a program not using a semester, trimester, or quarter system--

$$\frac{\text{Number of semester or trimester hours per academic year}}{24} + \frac{\text{Number of quarter hours per academic year}}{36} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 et seq.)

Income Contingent Loan (ICL) program: The student loan program authorized by Title IV-D of the HEA prior to July 23, 1992.

(Authority: 20 U.S.C. 1087a et seq.)

Independent student: A student who qualifies as an independent student under section 480(d) of the HEA.

(Authority: 20 U.S.C. 1087vv)

Initiating official: The designated department official authorized to begin an emergency action under 34 CFR 668.83.

National Defense Student Loan program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

National Direct Student Loan (NDSL) program: The student loan program authorized by Title IV-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

National Early Intervention Scholarship and Partnership (NEISP) program: The scholarship program authorized by Chapter 2 of subpart 1 of Title IV-A of the HEA.

(Authority: 20 U.S.C. 1070a-21 et seq.)

One-third of an academic year: A period that is at least one-third of an academic year as determined by an institution. At a minimum, one-third of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 10 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 8 semester or trimester hours or 12 quarter hours in an educational program whose length is measured in credit hours or 300 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under 668.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least one-third of the institution's academic year.

(Authority: 20 U.S.C. 1088)

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education's central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Participating institution: An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary.

Payment period: (1) With respect to the Federal Pell Grant Program, a payment period as defined in 34 CFR 690.3;

(2) With respect to the campus-based programs, a payment period as defined in 34 CFR 674.2, 675.2, and 676.2.

Presidential Access Scholarship (PAS) program: The scholarship program authorized by Chapter 3 of subpart 1 of Title IV-A of the HEA.

(Authority: 20 U.S.C. 1070a-31 et seq.)

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under 34 CFR 668.83.

State Student Incentive Grant (SSIG) program: The grant program authorized by Title IV-A-3 of the HEA.

(Authority: 20 U.S.C. 1070c et seq.)

Third-party servicer: (1) An individual or a State, or a private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to--

(i) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA, such as, but not restricted to--

(A) Processing student financial aid applications;

(B) Performing need analysis;

(C) Determining student eligibility and related activities;

(D) Certifying loan applications;

(E) Processing output documents for payment to students;

(F) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(G) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;

(H) Preparing and certifying requests for advance or reimbursement funding;

(I) Loan servicing and collection;

(J) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(K) Preparing a Fiscal Operations Report and Application to Participate (FISAP);

(ii) Exclude the following functions--

(A) Publishing ability-to-benefit tests;

(B) Performing functions as a Multiple Data Entry Processor (MDE);

(C) Financial and compliance auditing;

(D) Mailing of documents prepared by the institution;

(E) Warehousing of records; and

(F) Providing computer services or software; and

(iii) Notwithstanding the exclusions referred to in paragraph (1)(ii) of this definition, include any activity comprised of any function described in paragraph (1)(i) of this definition.

(2) For purposes of this definition, an employee of an institution is not a third-party servicer. The Secretary considers an individual to be an employee if the individual--

(i) Works on a full-time, part-time, or temporary basis;

(ii) Performs all duties on site at the institution under the supervision of the institution;

(iii) Is paid directly by the institution;

(iv) Is not employed by or associated with a third-party servicer; and

(v) Is not a third-party servicer for any other institution.

(Authority: 20 U.S.C. 1088)

Two-thirds of an academic year: A period that is at least two-thirds of an academic year as determined by an institution. At a minimum, two-thirds of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 20 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 16 semester or trimester hours or 24 quarter hours in an educational program whose length is measured in credit hours or 600 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under 668.3, two-thirds of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least two-thirds of the institution's academic year.

(Authority: 20 U.S.C. 1088)

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

Valid institutional student information report (valid ISIR): A valid institutional student information report as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS Program.

Valid student aid report (valid SAR): A valid student aid report (valid SAR) as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant Program and in 34 CFR 691.2 for purposes of the PAS Program.

(Authority: 20 U.S.C. 1070 et seq., unless otherwise noted)

Note: Section amended April 29, 1994, effective July 1, 1994. *Academic year* and *Third-party servicer* amended November 29, 1994, effective July 1, 1995. "Payment period" and "Federal Perkins Loan Program" definitions amended December 1, 1995, effective July 1, 1996. (b), definition of "Campus-based programs," amended November 27, 1996, effective July 1, 1997.

Sec. 668.3 Reductions in the length of an academic year.

(a) *General*. (1) An institution that provides at least a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree, respectively, may request the Secretary to reduce the minimum period of instructional time of the academic year for any of the institution's educational programs to not less than 26 weeks.

(2) The institution must submit its request to the Secretary in writing and must include in the request--

(i) Identification of each educational program for which the institution requests a reduction and the requested length of its academic year, in weeks of instructional time, for that educational program. The requested length for its academic year may not be less than 26 weeks of instructional time;

(ii) Information demonstrating that the institution satisfies the requirements of this section; and

(iii) Any other information that the Secretary may require to determine whether to grant the request.

(b) *Transition period for institutions participating in at least one Title IV, HEA program on the effective date of this section.* The Secretary grants, for a period not to exceed 2 years from the effective date of this section, the request of an institution participating in at least one Title IV, HEA program on the effective date of this section for a reduction in the minimum period of instructional time of the academic year if the institution--

(1) Satisfies the requirements of paragraph (a) of this section;

(2) Has an academic year of less than 30 weeks of instructional time on the effective date of these regulations;

(3) Demonstrates that the institution awards, disburses, and delivers, and has since July 23, 1992, awarded, disbursed, and delivered, Title IV, HEA program funds in accordance with the definition of academic year in section 481(d) of the HEA; and

(4) Demonstrates that the institution is in the process of changing to a minimum of a 30-week academic year.

(c) *Longterm reduction.* (1) The Secretary may grant the request of any institution that satisfies the requirements of paragraph (a) of this section for a longterm reduction in the minimum period of instructional time of the academic year. In making this determination, the Secretary considers circumstances including, but not limited to:

(i) A demonstration to the satisfaction of the Secretary by the institution of unique circumstances that justify granting the request;

(ii) In the case of a participating institution, demonstration that the institution awards, disburses, and delivers, and has since July 23, 1992, awarded, disbursed, and delivered, Title IV, HEA program funds in accordance with the definition of academic year in section 481(d) of the HEA;

(iii) Approval of the institution's nationally recognized accrediting agency or State body that legally authorizes the institution to provide postsecondary education, including specific review and approval of the length of the academic year for each educational program offered at the institution; and

(iv) The number of hours of attendance and other coursework that a full- time student is required to complete in the academic year for each of the institution's educational programs.

(2) An institution that is granted a reduction in the minimum of 30 weeks of instructional time for an academic year in accordance with paragraph (c)(1) of this section and that wishes to continue to use a reduced number of weeks of instructional time must reapply to the Secretary for a reduction whenever the institution is required to apply to continue to participate in a Title IV, HEA program.

(d) An institution may demonstrate compliance with paragraphs (b)(3) and (c)(1)(ii) of this section by making arrangements that are satisfactory to the Secretary to repay any overawards that resulted from the improper awarding, disbursing, or delivering of Title IV, HEA program funds.

(Authority: 20 U.S.C. 1088)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section added April 29, 1994, effective July 1, 1994. (c) amended and (d) added November 29, 1994, effective July 1, 1995. OMB control number added August 15, 1995, effective August 15, 1995.

Sec. 668.4 Payment period.

(a) Payment period for an eligible program that has academic terms and measures progress in credit hours. For a student enrolled in an eligible program that is offered in semesters, trimesters, quarters, or other academic terms and measures progress in credit hours, the payment period is the semester, trimester, quarter, or other academic term.

(b) Payment periods for an eligible program that measures progress in credit hours and does not have academic terms or measures progress in clock hours. (1) For a student enrolled in an eligible program that is one academic year or less in length--

(i) The first payment period is the period of time in which the student completes the first half of the program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of the program as measured in credit or clock hours.

(2) For a student enrolled in an eligible program that is more than one academic year in length--

(i) For the first academic year and any subsequent full academic year as measured in credit or clock hours--

(A) The first payment period is the period of time in which the student completes the first half of the academic year as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the second half of that academic year;

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a complete academic year--

(A) The first payment period is the period of time in which a student completes the first half of the remaining portion of the eligible program as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the remainder of the eligible program; and

(iii) For any remaining portion of an eligible program that is not more than half an academic year as measured in credit or clock hours, the payment period is the remainder of that eligible program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, if a student is enrolled in an eligible program that measures progress in credit hours and the student cannot earn half the credit hours in the program under paragraph (b)(1) of this section or half of the remaining portion of the eligible program under paragraph (b)(2)(i) and (b)(2)(ii) of this section until after the calendar midpoint between the first and last scheduled days of class, the second payment period begins on the later of--

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework.

(4) If, in an academic year, in a program of less than an academic year, or in the remaining portion of an eligible program under paragraph (b)(2) of this section, an institution chooses to have more than two payment periods, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070 et seq.)

Note: Section added November 29, 1996, effective July 1, 1997.

Sec. 668.5 through 668.7 [Reserved]

Sec. 668.8 Eligible program.

(a) *General.* An eligible program is an educational program that--

(1) Is provided by a participating institution; and

(2) Satisfies the other relevant requirements contained in this section.

(b) *Definitions.* For purposes of this section--

(1) The Secretary considers the "equivalent of an associate degree" to be--

(i) An associate degree; or

(ii) The successful completion of at least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program;

(2) A week is a consecutive seven-day period; and

(3)(i) For an educational program using a semester, trimester, or quarter system or an educational program using clock hours, the Secretary considers a week of instruction to be any week in which at least one day of regularly scheduled instruction, examinations, or preparation for examinations occurs; or

(ii) For an educational program using credit hours but not using a semester, trimester, or quarter system, the Secretary considers a week of instruction to be any week in which at least 12 hours of regularly scheduled instruction, examinations, or preparation for examinations occurs; and

(4) Instruction does not include periods of orientation, counseling, vacation, or other activity not related to class preparation or examinations.

(c) *Institution of higher education.* An eligible program provided by an institution of higher education must--

(1) Lead to an associate, bachelor's, professional, or graduate degree;

(2) Be at least a two-academic-year program that is acceptable for full credit toward a bachelor's degree; or

(3) Be at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and that prepares a student for gainful employment in a recognized occupation.

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(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution--

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must--

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation; and

(iv)(A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree; or

(3) For purposes of the Federal Stafford Loan, Federal PLUS, and Federal SLS programs only, must--

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section.

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if--

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under Sec. 668.23 report on the institution's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

(f) *Calculation of completion rate.* An institution shall calculate its completion rate for an educational program for any award year as follows:

(1) Determine the number of regular students who were enrolled in the program during the award year.

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner in accordance with Sec. 668.22(j)(4), a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy.

(3) Subtract from the total obtained under paragraph (f)(2) of this section the number of students who were enrolled in the program at the end of that award year.

(4) Determine the number of regular students who, during that award year, received within 150 percent of the published length of the educational program the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(5) Divide the number determined under paragraph (f)(4) of this section by the total obtained under paragraph (f)(3) of this section.

(g) *Calculation of placement rate.* (1) An institution shall calculate its placement rate for an educational program for any award year as follows:

(i) Determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(ii) Of the total obtained under paragraph (g)(1)(i) of this section, determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized educational credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed, or have been employed, for at least 13 weeks following receipt of the credential from the institution.

(iii) Divide the number of students determined under paragraph (g)(1)(ii) of this section by the total obtained under paragraph (g)(1)(i) of this section.

(2) An institution shall document that each student described in paragraph (g)(1)(ii) of this section obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to--

(i) A written statement from the student's employer;

(ii) Signed copies of State or Federal income tax forms; and

(iii) Written evidence of payments of Social Security taxes.

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section, an educational program qualifies as an eligible program for purposes of the Federal Pell Grant or FSEOG Program only if the educational program is an undergraduate program.

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

(j) *English as a second language (ESL).* (1) In addition to satisfying the relevant provisions of this section, an educational program that consists solely of instruction in ESL qualifies as an eligible program if--

(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and

(ii) The program leads to a degree, certificate, or other recognized educational credential.

(2) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

(3) An ESL program that qualifies as an eligible program under this paragraph is eligible for purposes of the Federal Pell Grant Program only.

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the Title IV, HEA programs, unless--

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

(l) *Formula.* For purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program with regard to the Title IV, HEA programs--

(1) A semester hour must include at least 30 clock hours of instruction;

(2) A trimester hour must include at least 30 clock hours of instruction; and

(3) A quarter hour must include at least 20 hours of instruction.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c-1070c-2, 1085, 1087aa-1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section amended April 29, 1994, effective July 1, 1994. (j)(2) removed, (j)(3) and (4) redesignated as (j)(2) and (3), respectively, and (b)(3)(ii), (f)(2), (k)(1), and (k)(2) amended November 29, 1994, effective July 1, 1995. OMB control number added August 15, 1995, effective August 15, 1995.

Sec. 668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

(a) In determining the amount of Title IV, HEA program assistance that a student who is enrolled in a program described in Sec. 668.8(k) is eligible to receive, the institution shall apply the formula contained in Sec. 668.8(l) to determine the number of semester, trimester, or quarter hours in that program, if the institution measures academic progress in that program in semester, trimester, or quarter hours.

(b) Notwithstanding paragraph (a) of this section, a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education is not required to apply the formula contained in Sec. 668.8(l) to determine the number of semester, trimester, or quarter hours in that program for purposes of calculating Title IV, HEA program assistance.

(Authority: 20 U.S.C. 1082, 1085, 1088, 1091, 1141)

Note: Section amended November 29, 1994, effective July 1, 1994 for (b) and July 1, 1995 for (a).

Subpart B--Standards for Participation in Title IV, HEA Programs

Sec. 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program or with applicable standards in this subpart by a third-party servicer that contracts with the institution may subject the institution or servicer, or both, to proceedings under subpart G of this part. These proceedings may lead to any of the following actions:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a Title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.12 Application procedures.

(a) *Applications for initial participation.* An institution that wishes to participate in a Title IV, HEA program must first apply to the Secretary for a certification that the institution meets the standards in this subpart.

(b) *Applications for continued participation.* A participating institution must apply to the Secretary for a certification that the institution continues to meet the standards in this subpart upon the request of the Secretary or if the institution wishes to--

(1) Continue to participate in a Title IV, HEA program beyond the scheduled expiration of the institution's current period of participation in the program;

(2) Include in the institution's participation in a Title IV, HEA program--

(i) A branch campus that is not currently included in the institution's participation in the program; or

(ii) Another location that is not currently included in the institution's participation in the program, if the Secretary requires the institution to apply for certification under paragraph (c) of this section;

(3) Reestablish participation in a Title IV, HEA program following a change in ownership that results in a change in control according to the provisions of 34 CFR part 600.

(c) *Notification and application requirements for additional locations.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to--

(i) Include in its participation in a Title IV, HEA program a location that is not currently included in the institution's participation in the program and that offers at least 50 percent of an educational program; or

(ii) Continue to include in its participation in a Title IV, HEA program a location that--

(A) Offers at least 50 percent, but less than 100 percent, of an educational program; and

(B) Has changed its name, location, or address.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(3) The Secretary may require the institution to apply for a certification that the institution continues to meet the requirements of this subpart.

(d) *Notification and application requirements for changes in name, location, or address.* (1) A participating institution must notify the Secretary, in writing, if the institution wishes to continue to participate in a Title IV, HEA program following a change in name, location, or address of the institution or continue to include in the institution's participation--

(i) A branch campus that has changed its name, location, or address; or

(ii) Another location that has changed its name, location, or address if that location offers 100 percent of an educational program.

(2) The Secretary considers the submission of the required notification under 34 CFR 600.30 with respect to that location to satisfy the notification requirement of this paragraph.

(e) *Required forms and information.* An institution that applies for participation under paragraph (a) or (b) of this section must--

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to certify that the institution meets the standards of this subpart.

(Authority: 20 U.S.C. 1099c)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section added April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994. (b)(2) and (c)(1)(i) amended November 29, 1994, effective July 1, 1995.

Sec. 668.13 Certification procedures.

(a) *Requirements for certification.* The Secretary certifies that an institution meets the standards of this subpart only if--

(1) The institution is an eligible institution;

(2) The institution meets the standards of this subpart;

(3) Each branch campus to be included in the institution's participation meets the applicable standards of this subpart; and

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, in the case of an institution seeking to participate for the first time in the Federal Pell Grant Program, the campus-based programs, the FDSL Program, or the Federal Stafford Loan, Federal SLS, or Federal PLUS Program, the institution requires the following individuals to complete Title IV, HEA program training provided or approved by the Secretary:

(A) The individual designated by the institution under Sec. 668.16(b)(1).

(B)(*1*) In the case of a for-profit institution, the chief administrator of the institution; or

(2) In the case of an institution other than a for-profit institution, the chief administrator of the institution, or another

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administrative official of the institution designated by the chief administrator.

(ii) If either one of the two individuals who is otherwise required to complete training under paragraph (a)(4)(i) of this section has previously completed Title IV, HEA program training provided or approved by the Secretary, the institution may elect to request an on-site Title IV, HEA program certification review by the Secretary instead of requiring that individual to complete again the Title IV, HEA program training provided or approved by the Secretary.

(iii) An institution may not begin participation in the applicable Title IV, HEA program or programs--

(A) In the case of an institution that requires individuals to complete training in accordance with paragraph (a)(4)(i) of this section, until the individuals complete the required training; or

(B) In the case of an institution that requests an on-site review in accordance with paragraph (a)(4)(ii) of this section, until the Secretary conducts the review and notifies the institution that it is in compliance with Title IV, HEA program requirements.

(b) *Period of participation.* (1) If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. An institution's period of participation expires four years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that the Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month to month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

(c) *Provisional certification.* (1) The Secretary may provisionally certify an institution if--

(i) The institution seeks initial participation in a Title IV, HEA program;

(ii) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(iii) The institution is a participating institution--

(A) That is applying for a certification that the institution meets the standards of this subpart;

(B) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under Sec. 668.15 or the standards of administrative capability under Sec. 668.16; and

(C) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(iv) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; or

(v) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraphs (c) (3) and (4) of this section, a provisionally certified institution's period of participation expires--

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i) of this section;

(ii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1)(ii), (iii), (iv) or (e)(2) of this section; and

(iii) If the Secretary provisionally certified the institution under paragraph (c)(1)(v) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

(3) Notwithstanding the maximum periods of participation provided for in paragraph (c)(2) of this section, if the Secretary provisionally certifies an institution, the Secretary may specify a shorter period of participation for that institution.

(4) For the purposes of this section, "provisional certification" means that the Secretary certifies that an institution has demonstrated to the Secretary's satisfaction that the institution--

(i) Is capable of meeting the standards of this subpart within a specified period; and

(ii) Is able to meet the institution's responsibilities under its program participation agreement, including compliance with any additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification.

(d) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (f)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in Sec. 668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or facsimile transmission.

(ii) The filing date of the request is the date on which the request is--

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by facsimile transmission.

(iii) Documents filed by facsimile transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.

(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) The designated department official making the decision concerning an institution's request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. The deciding official promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of--

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5)(i) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(ii) The date on which a request for reconsideration of a revocation is submitted is--

(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and

(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.

(Authority: 20 U.S.C. 1099c and E.O. 12549 (3 CFR, 1989 Comp., p. 189) and E.O. 12689 (3 CFR, 1989 Comp., p. 235))

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section added April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994. (c)(2)(ii) and (c)(2)(iii) amended June 30, 1995, effective July 31, 1995. (d) and (e) removed and (f) redesignated as (d) November 25, 1997, effective July 1, 1998.

Sec. 668.14 Program participation agreement.

(a)(1) An institution may participate in any Title IV, HEA program, other than the SSIG and NEISP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that--

(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to--

(i) The Secretary;

(ii) The State postsecondary review entity designated under 34 CFR part 667 for the State or States in which the institution or any of the institution's branch campuses or other locations are located if the institution was referred by the Secretary under 34 CFR 667.5;

(iii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs for attendance at the institution or any of the institution's branch campuses or other locations;

(iv) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution's branch campuses, other locations, or educational programs;

(v) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(vi) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of Sec. 668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of Sec. 668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, Federal SLS, or the Federal Perkins Loan Program, to holders of loans made to the institution's students under that program at such times and containing such information as the Secretary may reasonably require to carry out the purpose of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender under the Federal Stafford Loan, Federal PLUS, or Federal SLS Program that qualifies the student for a loan or loans in excess of the amount that the student is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1) (A) and (B), and 428H of the HEA;

(9) It will comply with the requirements of subpart D of this part concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment--

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program, the institution will inform all eligible borrowers, as defined in 34 CFR part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source for further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;

(15) In the case of an institution seeking to participate for the first time in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, the institution has included a default management plan as part of its application under Sec. 668.12 for participation in those programs and will use the plan for at least two years from the date of that application. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D to this part;

(16) In the case of an institution that changes ownership that results in a change of control, or that changes its status as a main campus, branch campus, or an additional location, the institution will, to participate in the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, develop a default management plan for approval by the Secretary and implement the plan for at least two years after the change in control or status. The Secretary considers the requirements of this paragraph to be satisfied by a default management plan developed in accordance with the default reduction measures described in appendix D to this part;

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State postsecondary review entities designated under 34 CFR part 667, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any information on fraud and abuse;

(18) It will not knowingly--

(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been--

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that offers athletically related student aid, it will comply with the provisions of paragraph (d) of this section;

(21) It will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution;

(22) It will not provide, nor contract with any entity that provides, any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the awarding of student financial assistance, except that this requirement shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance. This provision does not apply to the giving of token gifts to students or alumni for referring students for admission to the institution as long as: The gift is not in the form of money, check, or money order; no more than one such gift is given to any student or alumnus; and the gift has a value of not more than $25;

(23) It will meet the requirements established pursuant to part H of Title IV of the HEA by the Secretary, State postsecondary review entities designated under 34 CFR part 667, and nationally recognized accrediting agencies;

(24) It will comply with the institutional refund policy established in Sec. 668.22;

(25) It is liable for all--

(i) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

(ii) Refunds that the institution or its servicer may be required to make; and

(26) If the stated objectives of an educational program of the institution are to prepare a student for gainful employment in a recognized occupation, the institution will--

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student.

(c) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), the institution must certify that it--

(1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and

(2)(i) Has established a campus security policy in accordance with section 485(f) of the HEA; and

(ii) Has complied with the disclosure requirements of 668.47 as required by section 485(f) of the HEA.

(d) In order to participate in any Title IV, HEA program (other than the SSIG and NEISP programs), an institution that offers athletically related student aid must--

(1) Cause an annual compilation, independently audited not less often than every 3 years, to be prepared within 6 months after the end of the institution's fiscal year, of--

(i) The revenues derived by the institution from the institution's intercollegiate athletics activities, according to the following categories:

(A) Total revenues.

(B) Revenues from football.

(C) Revenues from men's basketball.

(D) Revenues from women's basketball.

(E) Revenues from all other men's sports combined.

(F) Revenues from all other women's sports combined;

(ii) Expenses made by the institution for the institution's intercollegiate athletics activities, according to the following categories:

(A) Total expenses.

(B) Expenses attributable to football.

(C) Expenses attributable to men's basketball.

(D) Expenses attributable to women's basketball.

(E) Expenses attributable to all other men's sports combined.

(F) Expenses attributable to all other women's sports combined; and

(iii) The total revenues and operating expenses of the institution; and

(2) Make the compilation and, where allowable by State law, the results of the audits required by paragraph (d)(1) of this section available for inspection by the Secretary and the public.

(e) For the purposes of paragraph (d) of this section--

(1) Revenues from intercollegiate athletics activities allocable to a sport shall include without limitation gate receipts, broadcast revenues and other conference distributions, appearance guarantees and options, concessions, and advertising;

(2) Revenues such as student activities fees, alumni contributions, and investment interest income that are not allocable to a sport shall be included in the calculation of total revenues only;

(3) Expenses for intercollegiate athletics activities allocable to a sport shall include without limitation grants-in-aid, salaries, travel, equipment, and supplies; and

(4) Expenses such as general and administrative overhead that are not allocable to a sport shall be included in the calculation of total expenses only.

(f)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(g)(1) Except as provided in paragraphs (h) and (i) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (g) of this section, the Secretary establishes the termination date.

(h) An institution's program participation agreement automatically expires on the date that--

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of Sec. 668.26(a) (1), (2), (4), or (7).

(i) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Redesignated from Sec. 668.12 to Sec. 668.14 and amended April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994.

Sec. 668.15 Factors of financial responsibility.

(a) *General.* To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section.

(b) *General standards of financial responsibility.* In general, the Secretary considers an institution to be financially responsible only if it--

(1) Is providing the services described in its official publications and statements;

(2) Is providing the administrative resources necessary to comply with the requirements of this subpart;

(3) Is meeting all of its financial obligations, including but not limited to--

(i) Refunds that it is required to make; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary;

(4) Is current in its debt payments. The institution is not considered current in its debt payments if--

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(i) The institution is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statement; or

(ii) the institution fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover those funds;

(5) Except as provided in paragraph (d) of this section, in accordance with procedures established by the Secretary, submits to the Secretary an irrevocable letter of credit, acceptable and payable to the Secretary equal to 25 percent of the total dollar amount of Title IV, HEA program refunds paid by the institution in the previous fiscal year;

(6) Has not had, as part of the audit report for the institution's most recently completed fiscal year--

(i) A statement by the accountant expressing substantial doubt about the institution's ability to continue as a going concern; or

(ii) A disclaimed or adverse opinion by the accountant;

(7) For a for-profit institution--

(i)(A) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. For purposes of this section, the acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables;

(B) Has not had operating losses in either or both of its two latest fiscal years that in sum result in a decrease in tangible net worth in excess of 10 percent of the institution's tangible net worth at the beginning of the first year of the two-year period. The Secretary may calculate an operating loss for an institution by excluding from net income: extraordinary gains or losses; income or losses from discontinued operations; prior period adjustment; and, the cumulative effect of changes in accounting principle. For purposes of this section, the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles; and

(C) Had, for its latest fiscal year, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities. The calculation of tangible net worth shall exclude all assets classified as intangible in accordance with the generally accepted accounting principles; or

(ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations that are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization;

(8) For a nonprofit institution--

(i)(A) Prepares a classified statement of financial position in accordance with generally accepted accounting principles or provides the required information in notes to the audited financial statements;

(B) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. For purposes of this section, the acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables.

(C)(*1*) Has, at the end of its latest fiscal year, a positive unrestricted current fund balance or positive unrestricted net assets. In calculating the unrestricted current fund balance or the unrestricted net assets for an institution, the Secretary may include funds that are temporarily restricted in use by the institution's governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or

(*2*) Has not had, an excess of current fund expenditures over current fund revenues over both of its 2 latest fiscal years that results in a decrease exceeding 10 percent in either the unrestricted current fund balance or the unrestricted net assets at the beginning of the first year of the 2-year period. The Secretary may exclude from net changes in fund balances for the operating loss calculation: Extraordinary gains or losses, income or losses from discontinued operations, prior period adjustment; and the cumulative effect of changes in accounting principle. In calculating the institution's unrestricted current fund balance or the unrestricted net assets, the Secretary may include funds that are temporarily restricted in use by the institution's governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or

(ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations which are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization.

(9) For a public institution--

(i) Has its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity;

(ii) Has a positive current unrestricted fund balance if reporting under the Single Audit Act;

(iii) Has a positive unrestricted current fund in the State's Higher Education Fund, as presented in the general purpose financial statements;

(iv) Submits to the Secretary, a statement from the State Auditor General that the institution has, during the past year, met all of its financial obligations, and that the institution continues to have sufficient resources to meet all of its financial obligations; or

(v) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations which are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization.

(c) *Past performance of an institution or persons affiliated with an institution.* An institution is not financially responsible if--

(1) A person who exercises substantial control over the institution or any member or members of the person's family alone or together--

(i)(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or

(B) Owes a liability for a violation of a Title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary; or

(2) The institution has--

(i) Been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency (as defined in 34 CFR part 682) within the preceding five years;

(ii) Had--

(A) An audit finding, during its two most recent audits of its conduct of the Title IV, HEA programs, that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the audit; or

(B) A program review finding, during its two most recent program reviews, of its conduct of the Title IV, HEA programs that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the program review;

(iii) Been cited during the preceding five years for failure to submit acceptable audit reports required under this part or individual Title IV, HEA program regulations in a timely fashion; or

(iv) Failed to resolve satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary issued pursuant to subpart G or subpart H of this part.

(d) *Exceptions to the general standards of financial responsibility.* (1)(i) An institution is not required to meet the standard in paragraph (b)(5) of this section if the Secretary determines that the institution--

(A)(1) Is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that is acceptable to the Secretary and ensures that the institution is able to pay all required refunds; and

(2) Contributes to that tuition recovery fund.

(B) Has its liabilities backed by the full faith and credit of the State, or by an equivalent governmental entity; or

(C) As determined under paragraph (g) of this section, demonstrates, to the satisfaction of the Secretary, that for each of the institution's two most recently completed fiscal years, it has made timely refunds to students in accordance with Sec. 668.22(j)(4), and that it has met or exceeded all of the financial responsibility standards in this section that were in effect for the corresponding periods during the two-year period.

(ii) In evaluating an application to approve a State tuition recovery fund to exempt its participating schools from the federal cash reserve requirements, the Secretary will consider the extent to which the State tuition recovery fund:

(A) Provides refunds to both in-state and out-of-state students;

(B) Allocates all refunds in accordance with the order delineated in Sec. 668.22(h); and

(C) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the funds assets.

(2) The Secretary considers an institution to be financially responsible, even if the institution is not otherwise financially responsible under paragraphs (b)(1) through (4) and (b)(6) through (9) of this section, if the institution--

(i) Submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; or

(ii) Establishes to the satisfaction of the Secretary, with the support of a financial statement submitted in accordance with paragraph (e) of this section, that the institution has sufficient resources to ensure against its precipitous closure, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary). The Secretary considers the institution to have sufficient resources to ensure against precipitous closure only if--

(A) The institution formerly demonstrated financial responsibility under the standards of financial responsibility in its preceding audited financial statement (or, if no prior audited financial statement was requested by the Secretary, demonstrates in conjunction with its current audit that it would have satisfied this requirement), and that its most recent audited financial statement indicates that--

(*1*) All taxes owed by the institution are current;

(*2*) The institution's net income, or a change in total net assets, before extraordinary items and discontinued operations, has not decreased by more than 10 percent from the prior fiscal year, unless the institution demonstrates that the decreased net income shown on the current financial statement is a result of downsizing pursuant to a management-approved business plan;

(*3*) Loans and other advances to related parties have not increased from the prior fiscal year unless such increases were secured and collateralized, and do not exceed 10 percent of the prior fiscal year's working capital of the institution;

(*4*) The equity of a for-profit institution, or the total net assets of a non-profit institution, have not decreased by more than 10 percent of the prior year's total equity;

(*5*) Compensation for owners or other related parties (including bonuses, fringe benefits, employee stock option allowances, 401k contributions, deferred compensation allowances) has not increased from the prior year at a rate higher than for all other employees;

(*6*) The institution has not materially leveraged its assets or income by becoming a guarantor on any new loan or obligation on behalf of any related party;

(*7*) All obligations owed to the institution by related parties are current, and that the institution has demanded and is receiving payment of all funds owed from related parties that are payable upon demand. For purposes of this section, a person does not become a related party by attending an institution as a student;

(B) There have been no material findings in the institution's latest compliance audit of its administration of the Title IV HEA programs; and

(C) There are no pending administrative or legal actions being taken against the institution by the Secretary, any other Federal agency, the institution's nationally recognized accrediting agency, or any State entity.

(3) An institution is not required to meet the acid test ratio in paragraph (b)(7)(i)(A) or (b)(8)(i)(B) of this section if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that--

(i) There is no reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(ii) It is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(iii) It has substantial equity in institution-occupied facilities, the acquisition of which was the direct cause of its failure to meet the acid test ratio requirement.

(4) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(1) of this section if--

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(1) of this section exercises substantial control over the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of--

(*1*) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(*2*) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(*3*) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability;

(B) The applicable liability described in paragraph (c)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why--

(*1*) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(*2*) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(e) removed and reserved

(f) *Definitions and terms.* For the purposes of this section--

(1)(i) An "ownership interest" is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation.

(ii) The term "ownership interest" includes, but is not limited to--

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust.

(iii) The term "ownership interest" does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of--

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan;

(2) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer, if the person--

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, the chief executive officer, or other executive officer of--

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer; and

(3) The Secretary considers a member of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.

(g) *Two-year performance requirement.* (1) The Secretary considers an institution to have satisfied the requirements in paragraph (d)(1)(C) of this section if the independent certified public accountant, or government auditor who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years--

(i)(A) For either of those fiscal years, did not find in the sample of student records audited or reviewed that the institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund under Sec. 668.22; or

(B) The Secretary considers the institution to have satisfied the conditions in paragraph (g)(1)(i)(A) of this section if the auditor or reviewer finds in the sample of student records audited or reviewed that the institution made only one late refund to a student in that sample; and

(ii) For either of those fiscal years, did not note a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

(2) If the Secretary or a State or guaranty agency finds during a review conducted of the institution that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must--

(i) Submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the Secretary or State or guaranty agency notifies the institution of that finding; and

(ii) Notify the Secretary of the guaranty agency or State that conducted the review.

(3) If the auditor who conducted the institution's compliance audit finds that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the date the institution's compliance audit must be submitted to the Secretary.

(h) *Foreign institutions.* The Secretary makes a determination of financial responsibility for a foreign institution on the basis of financial statements submitted under the following requirements--

(1) If the institution received less than $500,000 U.S. in title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement for that year. For purposes of this paragraph, the audited financial statements may be prepared under the auditing standards and accounting principles used in the institution's home country; or

(2) If the institution received $500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year, the institution must submit its audited financial statement in accordance with the requirements of Sec. 668.23, and satisfy the general standards of financial responsibility contained in this section, or qualify under an alternate standard of financial responsibility contained in this section.

(Authority: 20 U.S.C. 1094 and 1099c and Section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Redesignated from Sec. 668.13 to Sec. 668.15 and amended April 29, 1994, effective July 1, 1994. (b)(5), (7)(i), (8)(i)(B), and (d)(1) amended and (g) added November 29, 1994, effective July 1, 1995. (b)(7)(i)(C) and (e)(3)(iii) added; (c)(1)(ii) and (e)(3)(ii) amended June 30, 1995, effective July 31, 1995. OMB control number added August 15, 1995, effective August 15, 1995. (e)(1) revised June 12, 1996, effective July 12, 1996. (e) removed and reserved; (g) revised; and (h) added November 29, 1996, effective July 1, 1997.

Sec. 668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution--

(a) Administers the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA;

(b)(1) Designates a capable individual to be responsible for administering all the Title IV, HEA programs in which it participates and for coordinating those programs with the institution's other Federal and non-Federal programs of student financial assistance. The Secretary considers an individual to be "capable" under this paragraph if the individual is certified by the State in which the institution is located, if the State requires certification of financial aid administrators. The Secretary may consider other factors in determining whether an individual is capable, including, but not limited to, the individual's successful completion of Title IV, HEA program training provided or approved by the Secretary, and previous experience and documented success in administering the Title IV, HEA programs properly;

(2) Uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates. The Secretary considers the following factors to determine whether an institution uses an adequate number of qualified persons--

(i) The number and types of programs in which the institution participates;

(ii) The number of applications evaluated;

(iii) The number of students who receive any student financial assistance at the institution and the amount of funds administered;

(iv) The financial aid delivery system used by the institution;

(v) The degree of office automation used by the institution in the administration of the Title IV, HEA programs;

(vi) The number and distribution of financial aid staff; and

(vii) The use of third-party servicers to aid in the administration of the Title IV, HEA programs;

(3) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance; and

(4) Has written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary;

(c)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. For example, the functions of authorizing payments and disbursing or delivering funds must be divided so that for any particular student aided under the programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, as defined in 668.15, or who do not together exercise substantial control, as defined in 668.15, over the institution;

(d) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations;

(e) For purposes of determining student eligibility for assistance under a Title IV, HEA program, establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards--

(1) Are the same as or stricter than the institution's standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;

(2) Include the following elements:

(i) A qualitative component which consists of grades (provided that the standards meet or exceed the requirements of Sec. 668.7(c)), work projects completed, or comparable factors that are measurable against a norm.

(ii) A quantitative component that consists of a maximum timeframe in which a student must complete his or her educational program. The timeframe must--

(A) For an undergraduate program, be no longer than 150 percent of the published length of the educational program measured in academic years, terms, credit hours attempted, clock hours completed, etc. as appropriate;

(B) Be divided into increments, not to exceed the lesser of one academic year or one-half the published length of the educational program;

(C) Include a schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment to complete his or her educational program within the maximum timeframe; and

(D) Include specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress;

(3) Provide for consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(4) Provide for a determination at the end of each increment by the institution as to whether the student has met the qualitative and quantitative components of the standards (as provided for in paragraphs (e)(2)(i) and (ii) of this section);

(5) Provide specific procedures under which a student may appeal a determination that the student is not making satisfactory progress; and

(6) Provide specific procedures for a student to re-establish that he or she is maintaining satisfactory progress.

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews--

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, documentation of the student's social security number, or other factors relating to the student's eligibility for funds under the Title IV, HEA programs;

(g) Refers to the Office of Inspector General of the Department of Education for investigation--

(1) After conducting the review of an application provided for under paragraph (f) of this section, any credible information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are--

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income; and

(2) Any credible information indicating that any employee, third-party servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding--

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

(i) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(j) Shows no evidence of significant problems that affect, as determined by the Secretary, the institution's ability to administer a Title IV, HEA program and that are identified in--

(1) Reviews of the institution conducted by the Secretary, the Department of Education's Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, State postsecondary review entities designated under 34 CFR part 667, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(k) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 34 CFR part 85) that is--

(1) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4;

(1) For an institution that seeks initial participation in a Title IV, HEA program, does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the institution's latest completed award year. The institution must count all regular students who are enrolled during the latest completed award year, except those students who, during that period--

(1) Withdrew from, dropped out of, or were expelled from the institution; and

(2) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees (less any permitted administrative fee) under the institution's refund policy;

(m)(1) Has a cohort default rate--

(i) As defined in Sec. 668.17, on loans made under the Federal Stafford Loan and Federal SLS programs to students for attendance at that institution of less than 25 percent for each of the three most recent fiscal years for which the Secretary has determined the institution's rate; and

(ii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent;

(2)(i) Except that, if the Secretary determines that the institution is not administratively capable solely because the institution fails to comply with paragraph (m)(1) of this section, the Secretary will provisionally certify the institution in accordance with Sec. 668.13(c); and

(ii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(1) of this section by submitting an appeal in writing to the Secretary in accordance with and on the grounds specified in Sec. 668.17;

(n) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently, and

(o) Participates in the electronic processes that the Secretary--

(1) Provides at no substantial charge to the institution; and

(2) Identifies through a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c; Section 4 of Pub. L. 95-452, 92 Stat. 1101-1109; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

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Note: Redesignated from Sec. 668.14 to Sec. 668.16 and amended April 29, 1994, effective July 1, 1994. (e) and (l) amended November 29, 1994, effective July 1, 1995. (m)(2)(ii) amended June 30, 1995, effective July 31, 1995. OMB control number added August 15, 1995, effective August 15, 1995. (o) added November 29, 1996, effective July 1, 1997.

Sec. 668.17 Default reduction and prevention measures.

(a) Default rates. (1) If the FFEL Program cohort default rate, Direct Loan Program cohort rate, or if applicable, weighted average cohort rate for an institution exceeds 20 percent for any fiscal year, the Secretary notifies the institution of that rate.

(2) The Secretary may initiate a proceeding under subpart G of this part to limit, suspend, or terminate the participation of an institution in the Title IV, HEA programs, if the institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or a weighted average cohort rate that exceeds 40 percent for any fiscal year.

(3) Unless an institution is subject to loss of eligibility to participate in the FFEL Program under paragraph (b)(1) of this section, the Secretary initiates a proceeding under subpart G of this part to limit, suspend, or terminate an institution's participation in the FFEL Program if the institution, for each of the three most recent consecutive fiscal years, has any combination of an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or weighted average cohort rate that is equal to or greater than 25 percent.

(4) The Secretary may require an institution that meets the criteria under paragraph (a)(2) of this section to submit to the Secretary, within a timeframe determined by the Secretary, any reasonable information to help the Secretary make a preliminary determination as to what action should be taken against the institution.

(5) The Secretary ceases any limitation, suspension, or termination action against an institution under this paragraph if the institution satisfactorily demonstrates to the Secretary that, pursuant to an appeal that is complete and timely submitted under paragraph (c) of this section, the institution meets one of the exceptional mitigating circumstances under paragraph (c)(1)(ii)(B) of this section.

(b) End of participation. (1) Except as provided in paragraph (b)(6) of this section, an institution's participation in the FFEL Program ends 30 calendar days after the date the institution receives notification from the Secretary that its FFEL Program cohort default rate for each of the three most recent fiscal years for which the Secretary has determined the institution's rate, is equal to or greater than 25 percent.

(2) Except as provided in paragraph (b)(6) of this section, an institution's participation in the Direct Loan Program ends 30 calendar days after the date the institution receives notification from the Secretary that for each of the three most recent fiscal years the institution has any combination of an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is equal to or greater than 25 percent.

(3) Except as provided in paragraph (b)(6) of this section, an institution's participation in the FFEL Program or Direct Loan Program ends under paragraph (b) (1) or (2) of this section respectively may not participate in that program on or after the 30th calendar day after the date it receives notification from the Secretary that its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate exceeds the thresholds specified in paragraph (b) (1) or (2) of this section and continuing--

(i) For the remainder of the fiscal year in which the Secretary determines that the institution's participation has ended under paragraph (b) (1) or (2) of this section; and

(ii) For the two subsequent fiscal years.

(4) An institution whose participation in the FFEL Program or Direct Loan Program ends under paragraph (b) (1) or (2) of this section may not participate in that program until the institution satisfies the Secretary that the institution meets all requirements for participation in the FFEL Program or Direct Loan Program and executes a new agreement with the Secretary for participation in that program following the period described in paragraph (b)(3) of this section.

(5) Until July 1, 1998, the provisions of paragraph (b) (1) or (2) of this section and the provisions of 34 CFR 668.16(m) do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act.

(6) An institution may, notwithstanding 34 CFR 668.26, continue to participate in the FFEL Program or Direct Loan Program until the Secretary issues a decision on the institution's appeal if the Secretary receives an appeal that is complete, accurate, and timely in accordance with paragraph (c) of this section.

(c) Appeal procedures. (1) An institution may appeal the loss of participation in the FFEL Program or Direct Loan Program under paragraph (b)(1) or (2) of this section by submitting an appeal in writing to the Secretary by the 30th calendar day following the date the institution receives notification of the end of participation. An appeal or any portion of an appeal under this section will not be accepted after the 30th calendar day following the date the institution receives notification from the Secretary that it has lost its eligibility to participate in the FFEL or Direct Loan programs, except that an institution may submit an appeal under section (c)(1)(i) of this section later than the 30th calendar day if the appeal is submitted in accordance with paragraph (c)(8) and the information required by paragraph (c)(7) may be submitted in accordance with that paragraph. The appeal must include all information required by the Secretary to substantiate the appeal and all information must be submitted in a format prescribed by the Secretary. The additional 30-day period specified in paragraph (c)(7) of this section is an extension for the submission of the auditor's statement only and does not affect the date by which the appeal data must be submitted. An institution that is eligible for an extension under paragraph (c)(8) of this section must submit all required data within five working days following the agency's response to the institution's request for verification of data. The institution may appeal on the grounds that--

(i)(A) The calculation of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, for any of the three fiscal years relevant to the end of participation is not accurate; and

(B) A recalculation of the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, with corrected data verified by the cognizant guaranty agency or agencies for the FFEL Program loans, or the Secretary for Direct Loan Program loans would produce an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or weighted average cohort rate for any of those fiscal years that is below the threshold percentage specified in paragraph (b) (1) or (2) of this section; or

(ii) The institution meets one of the following exceptional mitigating circumstances:

(A) The institution has a participation rate index of 0.0375 or less. The participation rate index is determined by multiplying the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate or weighted average cohort rate, by the percentage of the institution's regular students, as defined in 34 CFR 600.2, enrolled on at least a half-time basis who received a loan made under either the FFEL Program or Direct Loan Program for a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's rate is determined. An institution that has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that exceeds 40 percent may not appeal its loss of eligibility under paragraphs (b) (1) or (2) of this section on the basis of its participation rate index.

(B) For a 12-month period that has ended during the six months immediately preceding the fiscal year for which the cohort of borrowers used to calculate the institution's rate is determined, 70 percent or more of the institution's regular students, as defined in 34 CFR 600.2, are individuals from disadvantaged economic backgrounds, as established by documentary evidence submitted by the institution. Such evidence must relate to either qualification by those students for an expected family contribution (EFC) of zero for any award year that generally coincides with the 12-month period, or attribution to those students of an adjusted gross income of the student and his or her parents or spouse, if applicable, reported for any award year that generally coincides with the 12-month period, of less than the poverty level, as determined under criteria established by the Department of Health and Human Services; and,

(1) For a degree-granting institution, 70 percent or more of the institution's regular students who were initially enrolled on a full-time basis and were scheduled to complete their programs during the same 12-month period the institution has chosen to determine the percentage of its students that come from disadvantaged economic backgrounds under paragraph (c)(1)(ii)(B) of this section, completed the educational programs in which they were enrolled. This rate is calculated by comparing the number of regular students who were classified as full-time at their initial enrollment in the institution and were originally scheduled, at the time of enrollment, to complete their programs within the relevant 12-month period, with the number of these students who received a degree from the institution; transferred from the institution to a higher level educational program; or, at the end of the 12-month period, remained enrolled and were making satisfactory academic progress toward completion of their educational programs; or

(2) For a non-degree-granting institution, the institution had a placement rate of 50 percent or more with respect to its former regular students who remained in the program beyond the point the students would have received a 100 percent tuition refund from the institution. A student or former student may not be considered successfully placed if the institution is the student's or former student's employer. This rate is based on those regular students who were initially enrolled on at least a half-time basis and were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period the institution has chosen to determine the percentage of its students that come from disadvantaged economic backgrounds under paragraph (c)(1)(ii)(B) of this section. This rate does not include those students who are still enrolled and making satisfactory progress in the educational programs in which they were originally enrolled on the date following 12 months after the date of the student's last day of attendance. This rate is calculated by determining the percentage of all those former regular students who;

(i) are employed in an occupation for which the institution provided training on the date following 12 months after the date of their last day of attendance at the institution; or

(ii) were employed in an occupation for which the institution provided training for at least 13 weeks before the date following 12 months after the date of their last day of attendance at the institution.

(2) For purposes of the completion rate and placement rate described in paragraph (c)(1)(ii)(B) (1) and (2) of this section, a student is originally scheduled, at the time of enrollment, to complete the educational program on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" for a student who is initially enrolled full-time is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the original date of enrollment and the anticipated graduation date appearing on the student's loan application, if any, whichever is less. The "amount of time normally required to complete the program" for a student who is initially enrolled less than full-time is the amount of time it would take that student to complete the program if the student remained enrolled at that level of enrollment.

(3) The Secretary issues a decision on the institution's appeal within 45 calendar days after the institution submits a complete appeal that addresses the applicable criteria in paragraph (c)(1) (i) or (ii) of this section to the Secretary.

(4) The Secretary's decision is based on the consideration of written material submitted by the institution. No oral hearing is provided.

(5) The Secretary withdraws the notification of loss of participation in the FFEL Program or Direct Loan Program sent to an institution under paragraph (b) (1) or (2) of this section, if he determines that the institution's appeal satisfies one of the exceptional mitigating circumstances specified in paragraph (c)(1) (i) or (ii) of this section.

(6) An institution must include in its appeal a certification, under penalty of perjury, by the institution's chief executive officer that all information provided by the institution in support of its appeal is true and correct.

(7) An institution that appeals on the grounds that it meets the exceptional mitigating circumstances criteria contained in paragraph (c)(1)(ii) of this section must include in its appeal an opinion from an independent auditor on management's assertions that the information contained in the appeal is complete, accurate, and determined in accordance with the requirements of this section. The examination level engagement will be performed in accordance with Statement on Standards for Attestation Engagements #3. This opinion must be received by the Secretary within 60 days following the date the institution receives notification of its loss of eligibility under paragraph (b) of this section.

(8) An institution that appeals under paragraph (c)(1)(i) of this section will not lose its eligibility to continue to participate during the appeal process due to a guaranty agency's failure to comply with 34 CFR 682.401(b)(14) which requires the agency to respond to an institution's request for verification of data within 15 working days, provided the institution:

(i) requested such verification within 10 working days from the date it received notification of its loss of eligibility under paragraph (b) of this section; and

(ii) provided a copy of the request for verification of data to the Secretary at the same time it requested such verification by the relevant guaranty agency(ies).

(d) FFEL Program Cohort Default Rate. (1)(i) For purposes of the FFEL Program, except as provided in paragraph (d)(1)(ii) of this section, the term FFEL Program cohort default rate means--

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program or Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who default before the end of the following fiscal year; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on Federal Stafford loans or Federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program or Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on such loans in any of the three most recent fiscal years, who default before the end of the fiscal year immediately following the fiscal year in which they entered repayment.

(C) In determining the number of students who default before the end of that following fiscal year, the Secretary includes only loans for which the Secretary or a guaranty agency has paid claims for insurance, and Direct Consolidation Loan Program loans that repaid FFEL Program loans that entered default.

(ii)(A) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(B) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(C) Any loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(D) For the purposes of this definition, an SLS loan made in accordance with section 428A of the HEA (or a loan made under the Federal Consolidation Loan Program or Direct Consolidation Loan Program, a portion of which is used to repay a Federal SLS loan) shall not be considered to enter repayment until after the borrower has ceased to be enrolled in an educational program leading to a degree, certificate, or other recognized educational credential at the participating institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of forbearance or deferment based on such enrollment. Each eligible lender of a loan made under section 428A (or a loan made under the Federal Consolidation Loan Program, a portion of which is used to repay a Federal SLS loan) of the HEA shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this definition, and the guaranty agency shall provide that information to the Secretary.

(2) Fiscal year means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(e) Direct Loan Program cohort rate. (1) For purposes of the Direct Loan Program, except as provided in paragraph (e)(2) of this section, the Secretary calculates Direct Loan Program cohort rates using the following formulas:

(i) For public institutions, private nonprofit institutions, or proprietary degree-granting institutions--

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in any of the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment.

(ii) For proprietary non-degree-granting institutions--

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year, or who, before the end of that following fiscal year, have, for 270 days, been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on a Direct Loan Program loan (or on the portion of a loan made under the Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment, or who, before the end of that following fiscal year, have for 270 days, been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization.

(2)(i) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(ii) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(iii) Any loan on which the borrower has made 12 consecutive monthly on-time payments under 34 CFR 685.211(e) before the end of that following fiscal year is not considered as in default for purposes of this definition.

(3) For purposes of an institution's Direct Loan cohort rate, a Direct Loan Program loan is considered in default when the borrower's or endorser's failure to make an installment payment when due has persisted for 270 days.

(f)(1) Weighted average cohort rate. For purposes of an institution that has former students entering repayment in a fiscal year on both Direct Loan Program and FFEL Program loans, except as provided under paragraph (f)(2) of this section, the Secretary calculates a weighted average cohort rate using the following formulas:

(i) For public institutions, private nonprofit institutions, or proprietary degree-granting institutions--

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter repayment in that fiscal year on those loans who are in default before the end of the following fiscal year; and

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay such loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on such loans in the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment.

(ii) For proprietary non-degree-granting institutions--

(A) For any fiscal year in which 30 or more current and former students at the institution enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who enter

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repayment in that fiscal year on such loans who are in default before the end of the following fiscal year, or who, before the end of that following fiscal year, have for 270 days: been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization; or

(B) For any fiscal year in which fewer than 30 of the institution's current and former students enter repayment on an FFEL Program or Direct Loan Program loan (or on the portion of a loan made under the Federal Consolidation Loan Program or Federal Direct Consolidation Loan Program that is used to repay those loans) received for attendance at the institution, the percentage of those current and former students who entered repayment on those loans in any of the three most recent fiscal years, who are in default before the end of the fiscal year immediately following the year in which they entered repayment, or who, before the end of that following fiscal year, have for 270 days: been in repayment under the income-contingent repayment plan with scheduled payments that are less than 15 dollars per month and those payments result in negative amortization.

(2)(i) In the case of a student who has attended and borrowed at more than one institution, the student (and his or her subsequent repayment or default) is attributed to each institution for attendance at which the student received a loan that entered repayment in the fiscal year.

(ii) A loan on which a payment is made by the institution, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(iii) Any Direct Loan Program loan on which the borrower has made 12 consecutive monthly on-time payments under 34 CFR 685.211(e) or has an FFEL Program loan that has been rehabilitated under section 428F of the HEA before the end of that following fiscal year is not considered as in default for purposes of this definition.

(3) For purposes of an institution's weighted average cohort rate, a Direct Loan Program loan is considered in default when a borrower's or endorser's failure to make an installment payment when due has persisted for 270 days.

(g) Applicability of Rates to Institutions. (1)(i) An FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of an institution applies to all locations of the institution as the institution exists on the first day of the fiscal year for which the rate is calculated.

(ii) An FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(2)(i) For an institution that changes its status from that of a location of one institution to that of a free-standing institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, based on the institution's status as of October 1 of the fiscal year for which the rate is being calculated.

(ii) For an institution that changes its status from that of a free-standing institution to that of a location of another institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate, based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from both the former free-standing institution and the other institution. This rate applies to the new, consolidated institution and all of its current locations.

(iii) For free-standing institutions that merge to form a new, consolidated institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate based on the combined number of students who enter repayment during the applicable fiscal year and the combined number of students who default during the applicable fiscal years from all of the institutions that are merging. This rate applies to the new consolidated institution.

(iv) For a location of one institution that becomes a location of another institution, the Secretary determines the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate based on the combined number of students who enter repayment during the applicable fiscal year and the number of students who default during the applicable fiscal years from both of the institutions in their entirety, not limited solely to the respective locations.

(h) *Appeal based on allegations of improper loan servicing or collection--*

(1) *General.* An institution that is subject to loss of participation in the FFEL programs under paragraph (a)(1) of this section or has been notified by the Secretary that its cohort default rate equals or exceeds 20 percent for the most recent year for which data are available may include in its appeal of that loss or rate a challenge based on allegations of improper loan servicing or collection. This challenge may be raised in addition to other challenges permitted under this section.

(2) *Standard of review.* An appeal based on allegations of improper loan servicing or collection must be submitted to the Secretary in accordance with the requirements

of this paragraph. The Secretary excludes any loans from the cohort default rate calculation which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of the cohort default rate.

(3) *Procedures.* (i) The following procedures apply to appeals from cohort default rates issued by the Secretary during Federal fiscal year 1994 and subsequent years. Upon receiving notice from the Secretary that the institution's cohort default rate exceeds the thresholds specified in paragraph (c)(2) of this section or that its most recent cohort default rate equals or exceeds 20 percent, the institution may appeal the calculation of the cohort default rate based on allegations of improper loan servicing or collection. The Secretary's notice includes a list of all borrowers included in the calculation of the institution's cohort default rate.

(ii) To initiate an appeal under this paragraph, the institution must notify, in writing, the Secretary and each guaranty agency that guaranteed loans included in the institution's cohort default rate that it is appealing the calculation of the cohort default rate. The notification must be received by the guaranty agency and the Secretary within 10 working days of the date the institution received the Secretary's notification. The institution's notification to the guaranty agency must include a copy of the list of students provided by the Secretary to the institution.

(iii) Within 15 working days of receiving the notification from an institution subject to loss of participation in the FFEL programs under paragraph (a)(1), or within 30 calendar days of receiving such notification from any other institution that may file a challenge to its default rate under this paragraph, the guaranty agency must provide the institution with a representative sample of the loan servicing and collection records relating to borrowers whose loans were guaranteed by the guaranty agency and that were included as defaulted loans in the calculation of the institution's cohort default rate. For purposes of this section, the term "loan servicing and collection records" refers only to the records submitted by the lender to the guaranty agency to support the lender's submission of a default claim and included in the claim file. In selecting the representative sample of records, the guaranty agency must use the following procedures:

(A) The guaranty agency shall list in social security number order all loans made to borrowers for attendance at the institution and guaranteed by the guaranty agency and included as defaulted loans in the calculation of the cohort default rate which is being challenged by the institution.

(B) From the population of loans identified by the guaranty agency, the guaranty agency shall identify a sample of the loans. The sample must be of a size such that the universe estimate derived from the sample is acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval. The sampling procedure must result in a determination of the number of loans that should be excluded from the calculation of the cohort default rate under this paragraph.

(C) Once the sample of loans has been established, the guaranty agency shall provide a copy of all servicing and collection records relating to each loan in the sample to the institution in hard copy format unless the guaranty agency and institution agree that all or some of the records can be provided in another format.

(D) The guaranty agency may charge the institution a reasonable fee for copying and providing the documents, not to exceed $10 per borrower file.

(E) After compiling the servicing and collection records for the loans in the sample, the guaranty agency shall send the records, a list of the loans included in the sample, and a description of how the sample was chosen to the institution. The guaranty agency shall also send a copy of the list of the loans included in the sample, listed in order by social security number, and the description of how the sample was chosen to the Secretary at the same time the material is sent to the institution.

(F) If the guaranty agency charges the institution a fee for copying and providing the documents under paragraph (f)(iii)(D) of this section, the guaranty agency is not required to provide the documents to the institution until payment is received by the agency. If payment of a fee is required, the guaranty agency shall notify the institution, in writing, within 15 working days of receipt of the institution's request, of the amount of the fee. If the guaranty agency does not receive payment of the fee from the institution within 15 working days of the date the institution received notice of the fee, the institution shall be considered to have waived its right to challenge the calculation of its cohort default rate based on allegations of improper loan servicing or collection in regard to loans guaranteed by that guaranty agency. The guaranty agency shall notify the institution and the Secretary, in writing, that the institution has failed to pay the fee and has apparently waived its right to challenge the calculation of the cohort default rate. The Secretary will determine that an institution which does not pay the required fee to the guaranty agency has not met its burden of proof in regard to the loans insured by that guaranty agency unless the institution proves that the agency's conclusion that the institution waived its appeal was incorrect.

(iv) After receiving the relevant loan servicing and collection records from all of the guaranty agencies that insured loans which are included in the cohort default rate calculation, the institution has 30 calendar days to file its appeal with the Secretary. An appeal is considered filed when it is received by the Secretary. If the institution is also filing an appeal under paragraph (d)(1)(i) of this section, the institution may delay submitting its appeal under this paragraph until the appeal under paragraph (d)(1)(i) is submitted to the Secretary. As part of the appeal, the institution must submit the following information to the Secretary:

(A) A list of the loans which the institution alleges would, due to improper loan servicing or collection, result in an inaccurate or incomplete calculation of the cohort default rate.

(B) Copies of all of the loan servicing or collection records and any other evidence relating to a loan that the institution believes has been subject to improper servicing or collection. The records must be in hard copy or microfiche format.

(C) A copy of the lists provided by the guaranty agencies under paragraph (e)(2) of this section.

(D) An explanation of how the alleged improper servicing or collection resulted in an inaccurate or incomplete calculation of the cohort default rate.

(E) A summary of the institution's appeal listing the number of loans insured by each guaranty agency that were included in the calculation of the institution's cohort default rate and the number of loans that would be excluded from the calculation of that rate by application of the results of the review of the sample of loans provided to the institution to the population of loans for each guaranty agency.

(F) A certification by an authorized official of the institution that all information provided by the institution in the appeal is true and correct.

(v) The Secretary or his designee reviews the information submitted by the institution and issues a decision.

(A) In making a decision under this paragraph the Secretary presumes that the information provided by the guaranty agency is correct unless the institution provides substantial evidence showing that the information maintained by the guaranty agency is not correct.

(B) If the Secretary finds that the evidence presented by the institution shows that some of the loans included in the sample of loan records reviewed by the institution should be excluded from calculation of the cohort default rate under paragraph (f)(2) of this section, the Secretary reduces the institution's cohort default rate, in accordance with a statistically valid methodology, to reflect the percentage of defaulted loans in the sample that should be excluded.

(vi) The Secretary notifies the institution, in writing, of the decision.

(vii) An institution may not seek judicial review of the Secretary's determination of the institution's cohort default rates until the Secretary or his designee issues the decision under paragraph (f)(3)(v) of this section.

(viii) For purposes of this paragraph, a default is considered to have been due to improper servicing or collection only if the borrower did not make a payment on the loan and the institution proves that the lender failed to perform one or more of the following activities:

(A) send at least one letter (other than the final demand letter) urging the borrower or endorser to make payments on the loan if the lender was required to send such letters;

(B) attempt at least one phone call to the borrower or endorser, if such attempts were required;

(C) submit a request for preclaims assistance to the guaranty agency, if such a request was required;

(D) send a final demand letter to the borrower, if required; and

(E) if required, the lender did not submit a certification (or other evidence) that skip tracing was performed.

(i) *Effect of decision.* An institution may challenge the calculation of a cohort default rate under this section no more than once. The Secretary's determination of an institution's appeal of the calculation of a cohort default rate is binding on any future appeal by the institution. An institution that fails to challenge the calculation of a cohort default rate under this section within 10 working days of receiving notice of the determination of the cohort default rate is prohibited from challenging that rate in any other proceeding before the Department.

(j) *Review of default rate data.* Effective on October 1, 1994, an institution has an opportunity to review and correct the information provided to the Secretary by the guaranty agencies for the purpose of calculating a cohort default rate on the loans to be included in the calculation of the institution's cohort default rate before the final rate is calculated.

(1)(i) Once the Secretary has received the information used in calculating the cohort default rates from the guaranty agencies, the Secretary calculates draft cohort default rates for each institution.

(ii) The Secretary sends all institutions with draft cohort default rates equal to or in excess of 20 percent, a copy of the information provided by the guaranty agencies in regard to loans included in the institution's cohort default rate.

(iii) An institution with a draft cohort default rate less than 20 percent will receive a notice of the draft default rate and may request a copy of the information provided by the guaranty agencies within 10 working days of receiving the notice from the Secretary. Upon receiving the request from the institution, the Secretary will send the institution a copy of the information requested. The time frames provided in this paragraph will not start until the institution receives the information from the Secretary.

(2) Within 30 calendar days of receiving the default rate information from the Secretary, the institution must notify the guaranty agency of any information included in the default rate data that it believes is incorrect. The institution must also provide the guaranty agency with evidence that it believes supports its contention that the default rate data are incorrect.

(3) Within 30 days of receiving the institution's challenge under paragraph (h)(2) of this section, the guaranty agency shall respond to the institution's challenge. The guaranty agency's response must include a response to each allegation of error made by the institution and any evidence supporting the agency's position.

(4) The guaranty agency shall provide a copy of its response to the institution to the Secretary and identify any errors in the information previously submitted to the Secretary.

(5) The information used to calculate cohort default rates will be changed to reflect allegations of error made by an institution, confirmed by the guaranty agency and accepted by the Secretary prior to releasing final cohort default rates.

(6) The draft default rate issued by the Secretary under paragraph (h)(1) of this section may not be considered public information and may not be otherwise voluntarily released by the Secretary or the guaranty agency.

(7) An institution may not appeal a cohort default rate under paragraph (d)(1) of this section on the basis of any alleged errors in the default rate information unless errors were identified by the institution in a challenge to its preliminary default rate under paragraph (h) of this section.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Redesignated from Sec. 668.15 to Sec. 668.17 and amended April 29, 1994, effective July 1, 1994. (f), (g) and (h) added April 29, 1994, effective July 1, 1994 for (g) and effective July 18, 1994 for (f) and (h). (f), (g), and (h) amended November 29, 1994, effective July 1, 1995. OMB control number added August 15, 1995, effective August 15, 1995. (f), (g), and (h) redesignated as (h), (i) and (j) respectively; (a) through (e) amended; and (f) and (g) added December 1, 1995, effective July 1, 1996.

Sec. 668.18 [Removed and Reserved]

Note: Redesignated from Sec. 668.16 to Sec. 668.18 April 29, 1994, effective July 1, 1994. Removed and reserved December 1, 1994, effective July 1, 1995.

Sec. 668.19 Financial aid transcript.

(a) (1) An institution shall determine whether a student who is applying for assistance under any title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any title IV, HEA program assistance the institution the student is, or will be, attending--

(i) Must request each eligible institution the student previously attended to provide to it a financial aid transcript; or

(ii) May use information it obtains from the National Student Loan Data System (NSLDS) to satisfy the requirements of paragraphs (a)(1) and (a)(2)(i) of this section, after the Secretary informs institutions through a Notice in the Federal Register that the NSLDS is available for this purpose, and information on how the NSLDS can be used.

(3) Except as provided in paragraph (b)(5) of this section, if an institution requests a financial aid transcript from any institution a student previously attended, until the institution receives each requested financial aid transcript, the institution--

(i) May withhold payment of Federal Pell Grant and campus-based funds to the student;

(ii) May disburse Federal Pell Grant and campus-based funds to the student for one payment period only;

(iii) May decline to certify the student's Federal Stafford Loan application or the parent's Federal PLUS application under the FFEL Program;

(iv) May decline to originate the student's Federal Direct Stafford Loan or the parent's Federal Direct PLUS under the Direct Loan Program;

(v) May not deliver Federal Stafford or disburse Federal Direct Stafford Loan proceeds to a student; and

(vi) May not deliver Federal PLUS or disburse Federal Direct PLUS proceeds to a parent or student.

(4) (i) An institution may not hold Federal Stafford or Federal PLUS loan proceeds under paragraph (b)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of such proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a Federal Stafford or Federal PLUS loan application before receiving all required financial aid transcripts shall return to the lender the appropriate amount of any Federal Stafford or Federal PLUS proceeds if it receives a financial aid transcript indicating that the student is not eligible for all, or a part, of the loan proceeds.

(5) An institution may disburse title IV, HEA program funds to a student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended--

(i) Has closed, and information concerning the student's receipt of title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution that requested a financial aid transcript--

(1) All information in its possession concerning whether the student in question attended institutions other than itself and the requesting institution; and

(2) (i) A financial aid transcript for that student, if the student received or benefitted from any title IV, HEA program assistance while attending the institution; or

(ii) A written certification that--

(A) The student did not receive or benefit from any title IV, HEA program assistance while attending the institution; or

(B) The transcript would cover only years for which the institution no longer has records and is no longer required to keep records under the applicable title IV, HEA program recordkeeping requirements.

(c) An institution must disclose on a financial aid transcript for a student--

(1) The student's name and social security number;

(2) To the extent the institution is aware, whether the student is in default on any title IV, HEA program loan;

(3) To the extent the institution is aware, whether the student owes an overpayment on any title IV, HEA program grant or Federal Perkins Loan;

(4) For the award year for which a financial aid transcript is requested, the student's Scheduled Federal Pell Grant and the amount of Pell Grant funds disbursed to the student;

(5) The aggregate amount of loans made to the student under each of the title IV, HEA loan programs for attendance at the institution;

(6) For the award year in which a financial aid transcript is requested, the total amount of Federal Perkins loan funds disbursed to the student;

(7) Whether the student owed an outstanding balance on July 1, 1987 on either a National Direct Student Loan made for attendance at the institution;

(8) Whether the student owed an outstanding balance on October 1, 1992 on either a Federal Perkins loan or a National Direct Student Loan made for attendance at the institution; and

(9) The amount of, and period of enrollment for, the most current loan made to the student under the FFEL, and Direct Loan programs for attendance at the institution.

(d) (1) A financial aid transcript must be signed by an official authorized by the institution to disclose information in connection with title IV, HEA programs.

(2) An institution must base the information it includes on financial aid transcripts on records it maintains under the title IV, HEA programs recordkeeping requirements.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1091, 1094)

Note: Section amended December 1, 1995, effective July 1, 1996.

Sec. 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

(a) A noncredit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue a course of study leading to a certificate or degree.

(1) A noncredit remedial course is one for which no credit is given toward a certificate or degree; and

(2) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by--

(1) Calculating the number of classroom and homework hours required for that course;

(2) Comparing those hours with the hours required for nonremedial courses in a similar subject; and

(3) Giving the remedial course the same number of credit or clock hours it gives the nonremedial course with the most comparable classroom and homework requirements.

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, Stafford Loan, PLUS, and SLS programs, an institution may not take into account any noncredit or reduced credit remedial course if--

(1) That course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program;

(2) The educational level of instruction provided in the noncredit or reduced credit remedial course is below the level needed to pursue successfully the degree or certificate program offered by that institution after one year in that remedial course; or

(3) Except for a course in English as a second language, the educational level of instruction provided in that course is below the secondary level. For purposes of this section, the Secretary considers a course to be below the secondary level if any of the following entities determine that course to be below the secondary level:

(i) The State agency that legally authorized the institution to provide postsecondary education.

(ii) In the case of an accredited or preaccredited institution, the nationally recognized accrediting agency or association that accredits or preaccredits the institution.

(iii) In the case of a public postsecondary vocational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, the State agency recognized for the approval of public postsecondary vocational education that approves the institution.

(iv) The institution.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of noncredit or reduced credit remedial coursework in determining--

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the campus-based, Stafford Loan, PLUS, and SLS programs.

(e) One academic year's worth of noncredit or reduced credit remedial coursework is equivalent to--

(1) Thirty semester or 45 quarter hours; or

(2) Nine hundred clock hours.

(f) Courses in English as a second language do not count against the one-year academic limitation contained in paragraph (d) of this section.

(Authority: 20 U.S.C. 1094)

Note: Heading, (c)(1), and (c)(2) amended and new paragraph (c)(3) added July 31, 1991, effective September 14, 1991.

Sec. 668.21 Treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

(a)(1) If a student officially withdraws, drops out, or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or noninstitutional costs under the Pell Grant, SEOG, ICL, and Perkins Loan programs are an overpayment.

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(2) The institution shall return that overpayment to the respective Title IV, HEA programs in the amount that the student received from each program.

(b) For purposes of this section, the Secretary considers that a student drops out before his or her first day of class of a payment period if the institution is unable to document the student's attendance at any class during the payment period.

(Authority: 20 U.S.C. 1094)

Note: Section heading amended December 1, 1995, effective July 1, 1996.

Sec. 668.22 Institutional refunds and repayments.

(a) *General.* (1) An institution shall have a fair and equitable refund policy under which the institution makes a refund of unearned tuition, fees, room and board, and other charges to a student who received Title IV, HEA program assistance, or whose parent received a Federal PLUS loan or Federal Direct PLUS loan on behalf of the student if the student--

(i) Does not register for the period of enrollment for which the student was charged; or

(ii) Withdraws, drops out, is expelled from the institution, or otherwise fails to complete the program on or after his or her first day of class of the period of enrollment for which he or she was charged.

(2) The institution shall provide a clear and conspicuous written statement containing its refund policy, including the allocation of refunds and repayments to sources of aid to a prospective student prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement. The institution must make available to students upon request examples of the application of this policy and inform students of the availability of these examples in the written statement. The institution shall make its policy known to currently enrolled students. The institution shall include in its statement the procedures that a student must follow to obtain a refund, but the institution shall return the portion of a refund allocable to the Title IV, HEA programs in accordance with paragraph (f) of this section whether the student follows those procedures or not. If the institution changes its refund policy, the institution shall ensure that all students are made aware of the new policy.

(3) The institution shall publish the costs of required supplies and equipment and shall substantiate to the Secretary upon request that the costs are reasonably related to the cost of providing the supplies and equipment to students.

(b) *Fair and equitable refund policy.* (1) For purposes of paragraph (a) of this section, an institution's refund policy is fair and equitable if the policy provides for a refund of at least the larger of the amount provided under--

(i) The requirements of applicable State law;

(ii) The specific refund standards established by the institution's nationally recognized accrediting agency if those standards are approved by the Secretary;

(iii) The pro rata refund calculation described in paragraph (c) of this section, for any student attending the institution for the first time whose withdrawal date is on or before the 60 percent point in time in the period of enrollment for which the student has been charged; or

(iv) For purposes of determining a refund when the pro rata refund calculation under paragraph (b)(1)(iii) of this section does not apply, and no standards for a refund under State law under paragraph (b)(1)(i) and no standards established by the institution's accrediting agency under (b)(1)(ii) of this section exist, the larger of--

(A) The Federal refund calculation contained in paragraph (d) of this section; or

(B) The institution's refund policy.

(2) For purposes of the calculation of a pro rata refund under paragraph (b)(1)(iii) of this section, "the 60 percent point in time in the period of enrollment for which the student has been charged" is--

(i) In the case of an educational program that is measured in credit hours, the point in calendar time when 60 percent of the period of enrollment for which the student has been charged, as defined in paragraph (e) of this section, has elapsed; and

(ii) In the case of an educational program that is measured in clock hours, the point in time when the student completes 60 percent of the clock hours scheduled for the period of enrollment for which the student is charged, as defined in paragraph (e) of this section.

(3) The institution must determine which policy under paragraph (b)(1) of this section provides for the largest refund to that student.

(4) For all refund calculations other than the pro rata refund calculation under paragraph (b)(1)(iii) of this section, an institution must subtract the unpaid amount of a scheduled cash payment from the amount the institution may retain in accordance with paragraph (f)(2) of this section.

(c) *Pro Rata refund*. (1) "Pro rata refund," as used in this section, means a refund by an institution to a student attending that institution for the first time of not less than that portion of the tuition, fees, room, board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the withdrawal date, rounded downward to the nearest 10 percent of that period, less any unpaid amount of a scheduled cash payment for the period of enrollment for which the student has been charged.

(2) A "scheduled cash payment" is the amount of institutional charges that is not paid for by financial aid for the period of enrollment for which the student has been charged exclusive of--

(i) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn;

(ii) Late disbursements of loans made under the Federal Stafford Loan, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d), and allowable late disbursements of unsubsidized Federal Stafford loans and loans made under the Federal Direct Student Loan Program in accordance with 34 CFR 685.303(d); and

(iii) Late disbursements of State student financial assistance, for which the student is still eligible in spite of having withdrawn, made in accordance with the applicable State's written late disbursement policies. The late disbursement must be made within 60 days after the student's date of withdrawal, as defined in paragraph (j)(1) of this section, or the institution must--

(A) Recalculate the refund in accordance with this section, including recalculating the student's unpaid charges in accordance with this paragraph without consideration of the State's late disbursement amount; and

(B) Return any additional refund amounts due as a result of the recalculation in accordance with paragraph (h) of this section.

(3) The "unpaid amount of a scheduled cash payment" is computed by subtracting the amount paid by the student for the period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged.

(4) An institution may exclude from the calculation of a pro rata refund under this paragraph a reasonable administrative fee not to exceed the lesser of--

(i) Five percent of the tuition, fees, room and board, and other charges assessed the student; or

(ii) One hundred dollars.

(5)(i) For purposes of this section, "other charges assessed the student by the institution" include, but are not limited to, charges for any equipment (including books and supplies) issued by an institution to the student if the institution specifies in the enrollment agreement a separate charge for equipment that the student actually obtains or if the institution refers the student to a vendor operated by the institution or an entity affiliated or related to the institution.

(ii) The institution may exclude from the calculation of a pro rata refund under this paragraph the documented cost to the institution of unreturnable equipment issued to the student in accordance with paragraph (c)(5)(i) of this section or of returnable equipment issued to the student in accordance with paragraph (c)(5)(i) of this section if the student does not return the equipment in good condition, allowing for reasonable wear and tear, within 20 days following the date of the student's withdrawal. For example, equipment is not considered to be returned in good condition and, therefore, is unreturnable, if the equipment cannot be reused because of clearly recognized health and sanitary reasons. The institution must clearly and conspicuously disclose in the enrollment agreement any restrictions on the return of equipment, including equipment that is unreturnable. The institution must notify the student in writing prior to enrollment that return of the specific equipment involved will be required within 20 days of the student's withdrawal.

(iii) An institution may not delay its payment of the portion of a refund allocable under this section to a Title IV, HEA program or a lender under 34 CFR 682.607 by reason of the process for return of equipment prescribed in paragraph (c)(5) of this section.

(6) For purposes of this section--

(i) "Room" charges do not include charges that are passed through the institution from an entity that is not under the control of, related to, or affiliated with the institution; and

(ii) "Other charges assessed the student by the institution" do not include fees for group health insurance, if this insurance is required for all students and the purchased coverage remains in effect for the student throughout the period for which the student was charged.

(7)(i) For purposes of this section, a student attending an institution for the first time is a student who--

(A) Has not previously attended at least one class at the institution; or

(B) Received a refund of 100 percent of his or her tuition and fees (less any permitted administrative fee) under the institution's refund policy for previous attendance at the institution.

(ii) A student remains a first-time student until the student either--

(A) Withdraws, drops out, or is expelled from the institution after attending at least one class; or

(B) Completes the period of enrollment for which he or she has been charged.

(8) For purposes of this paragraph, "the portion of the period of enrollment for which the student has been charged that remains" is determined--

(i) In the case of an educational program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the student's withdrawal date;

(ii) In the case of an educational program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of scheduled clock hours remaining to be completed by the student in that period as of the student's withdrawal date; and

(iii) In the case of an educational program that consists predominantly of correspondence courses, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the number of lessons not submitted by the student.

(d) *Federal Refund.* (1) "Federal refund," as used in this section, means a refund by an institution to a student attending that institution of not less than the portion of institutional charges (tuition, fees, room, board and other charges assessed the student by the institution) to be refunded as follows--

(i) If a student withdraws, drops out, or is expelled from the institution before the first day of classes for the period of enrollment for which the student was charged, the institution must follow the provisions under Sec. 668.21 for the treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant Program funds, the provisions under Sec. 682.604(d)(3) or (4) for the treatment of FFEL Program funds, and the provisions under Sec. 685.303(b)(3) for the treatment of Direct Loan Program funds, as appropriate;

(ii) The institution must refund 100 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if a student withdraws on the first day of classes for the period of enrollment for which the student was charged;

(iii) The institution must refund at least 90 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if a student withdraws at any time after the first day of classes for the period of enrollment for which the student was charged up to and including the end of the first 10 percent (in time) of that period of enrollment;

(iv) The institution must refund at least 50 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if the student withdraws at any time after the end of the first 10 percent (in time) of the period of enrollment for which the student was charged up to and including the end of the first 25 percent (in time) of that period of enrollment; and

(v) The institution must refund at least 25 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if the student withdraws at any time after the end of the first 25 percent (in time) of the period of enrollment for which the student was charged up to and including the end of the first 50 percent (in time) of that period of enrollment.

(2) An institution may exclude from the calculation of a Federal refund under this paragraph a reasonable administrative fee not to exceed the lesser of--

(i) Five percent of the tuition, fees, room and board, and other charges assessed the student; or

(ii) One hundred dollars.

(3)(i) For purposes of this section, "other charges assessed the student by the institution" include, but are not limited to, charges for any equipment (including books and supplies) issued by an institution to the student if the institution specifies in the enrollment agreement a separate charge for equipment that the student actually obtains or if the institution refers the student to a vendor operated by the institution or an entity affiliated or related to the institution.

(ii) The institution may exclude from the calculation of a Federal refund under this paragraph the documented cost to the institution of unreturnable equipment issued to the student in accordance with paragraph (d)(3)(i) of this section or of returnable equipment issued to the student in accordance with paragraph (d)(3)(i) of this section if the student does not return the equipment in good condition, allowing for reasonable wear and tear, within 20 days following the date of the student's withdrawal. For example, equipment is not considered to be returned in good condition and, therefore, is unreturnable, if the equipment cannot be reused because of clearly recognized health and sanitary reasons. The institution must clearly and conspicuously disclose in the enrollment agreement any restrictions on the return of equipment, including equipment that is unreturnable. The institution must notify the student in writing prior to enrollment that return of the specific equipment involved will be required within 20 days of the student's withdrawal.

(iii) An institution may not delay its payment of the portion of a refund allocable under this section to a Title IV, HEA program or a lender under 34 CFR 682.607 by reason of the process for return of equipment prescribed in paragraph (c)(3) of this section.

(4) For purposes of this section--

(i) "Room" charges do not include charges that are passed through the institution from an entity that is not under the control of, related to, or affiliated with the institution; and

(ii) "Other charges assessed the student by the institution" do not include fees for group health insurance, if this insurance is required for all students and the purchased coverage remains in effect for the student throughout the period for which the student was charged.

(e) *Period of enrollment for which the student has been charged.* (1) For purposes of this section, "the period of enrollment for which the student has been charged," means the actual period for which an institution charges a student, except that the minimum period must be--

(i) In the case of an educational program that is measured in credit hours or clock hours and uses semesters, trimesters, quarters, or other academic terms, the semester, trimester, quarter or other academic term; or

(ii) In the case of an educational program that is measured in credit hours or clock hours and does not use semesters, trimesters, quarters, or other academic terms and is--

(A) Longer than or equal to the academic year in length, the greater of the payment period or one-half of the academic year;

(B) Shorter than the academic year in length, the length of the educational program.

(2) If an institution charges by different periods for different charges, the "period of enrollment for which the student has been charged" for purposes of this section is the longest period for which the student is charged. The institution must include any charges assessed the student for the period of enrollment or any portion of that period of enrollment when calculating the refund.

(f) *Overpayments.* (1) An institution shall determine whether a student has received an overpayment for noninstitutional costs for the period of enrollment for which the student has been charged if--

(i) The student officially withdraws, drops out, or is expelled, on or after his or her first day of class of that period; and

(ii) The student received Title IV, HEA program assistance other than from the FWS, Federal Stafford loan, Federal PLUS, Federal SLS, Federal Direct Stafford, or Federal Direct PLUS Program for that period.

(2)(i) To determine if the student owes an overpayment, the institution shall subtract the noninstitutional costs that the student incurred for that portion of the period of enrollment for which the student has been charged from the amount of all assistance (other than from the FWS, Federal Stafford Loan, Federal PLUS, Federal SLS Program, Federal Direct Stafford, or Federal Direct PLUS) that the institution disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(g) *Repayments to Title IV, HEA programs of institutional refunds and overpayments.* (1)(i) An institution shall return a portion of the refund calculated in accordance with paragraph (b) of this section to the Title IV, HEA programs if the student to whom the refund is owed received assistance under any Title IV, HEA program other than the FWS Program.

(ii) The portion of the refund that an institution shall return to the Title IV, HEA programs may not exceed the amount of assistance that the student received under the Title IV, HEA programs other than under the FWS Program for the period of enrollment for which the student has been charged.

(2) For purposes of this section, for all refund calculations other than the pro rata refund calculation required under paragraph (b)(1)(iii) of this section--

(i) An institutional refund means the amount paid for institutional charges for the period of enrollment for which the student has been charged minus the amount that the institution may retain under paragraph (g)(2)(iii) of this section for the portion of the period of enrollment for which the student has been charged that the student was actually enrolled at the institution;

(ii) An institution may not include any unpaid amount of a scheduled cash payment in determining the amount that the institution may retain for institutional charges. A scheduled

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cash payment is the amount of institutional charges that has not been paid by financial aid for the period of enrollment for which the student has been charged, exclusive of--

(A) Any amount scheduled to be paid by Title IV, HEA program assistance that the student has been awarded that is payable to the student even though the student has withdrawn;

(B) Late disbursements of loans made under the Federal Stafford, Federal SLS, and Federal PLUS programs in accordance with 34 CFR 682.207(d), and allowable late disbursements of unsubsidized Federal Stafford loans and loans made under the Federal Direct Student Loan Program in accordance with 34 CFR 685.303(d); and

(C) Late disbursements of State student financial assistance, for which the student is still eligible in spite of having withdrawn, made in accordance with the applicable State's written late disbursement policies. The late disbursement must be made within 60 days after the student's date of withdrawal, as defined in paragraph (j)(1) of this section, or the institution must--

(*1*) Recalculate the refund in accordance with this section, including recalculating the student's unpaid charges in accordance with this paragraph without consideration of the State late disbursement amount; and

(*2*) Return any additional refund amounts due as a result of the recalculation in accordance with paragraph (h) of this section;

(iii) In determining the amount that the institution may retain for the portion of the period of enrollment for which the student has been charged during which the student was actually enrolled, an institution shall--

(A) Compute the unpaid amount of a scheduled cash payment by subtracting the amount paid by the student for that period of enrollment for which the student has been charged from the scheduled cash payment for the period of enrollment for which the student has been charged; and

(B) Subtract the unpaid amount of the scheduled cash payment from the amount that may be retained by the institution according to the institution's refund policy; and

(iv) An institution shall return the total amount of Title IV, HEA program assistance (other than amounts received from the FWS Program) paid for institutional charges for the period of enrollment for which the student has been charged if the unpaid amount of the student's scheduled cash payment is greater than or equal to the amount that may be retained by the institution under the institution's refund policy.

(3)(i) A student must repay to the institution or to the Title IV, HEA programs a portion of the overpayment as determined according to paragraph (f) of this section. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR parts 673, 690, and 691).

(ii) The portion of the overpayment that the student or the institution (if the institution recovers the overpayment) shall return to the Title IV, HEA programs may not exceed the amount of assistance received under the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Direct Stafford, or Federal Direct PLUS Program for the period of enrollment for which the student has been charged.

(iii) Unless otherwise provided for in applicable program regulations--

(A) If the amount of the overpayment is less than $100, the student is considered not to owe an overpayment, and the institution is not required to contact the student or recover the overpayment; and

(B) If an institution demonstrates that the total amount of a refund would be $25 or less, the institution is not required to pay the refund, provided that the institution has obtained written authorization from the student in the enrollment agreement to retain any amount of the refund that would be allocated to the Title IV, HEA loan programs.

(h) *Allocation of refunds and overpayments.* (1) Except as provided in paragraph (h)(2) of this section, if a student who received Title IV, HEA program assistance (other than assistance under the FWS Program) is owed a refund calculated in accordance with paragraph (b) of this section, or if a student who received Title IV, HEA program assistance (other than assistance under the FWS, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Direct Stafford, or Federal Direct PLUS Program) must repay an overpayment calculated in accordance with paragraph (f) of this section, an institution shall allocate that refund and any overpayment collected from the student in the following order:

(i) To eliminate outstanding balances on unsubsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(ii) To eliminate outstanding balances on subsidized Federal Stafford loans received by the student for the period of enrollment for which he or she was charged.

(iii) To eliminate outstanding balances on Federal PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(iv) To eliminate outstanding balances on unsubsidized Federal Direct Stafford loans received by the student for the period of enrollment for which he or she was charged.

(v) To eliminate outstanding balances on subsidized Federal Direct Stafford loans received by the student for the period of enrollment for which he or she was charged.

(vi) To eliminate outstanding balances on Federal Direct PLUS loans received on behalf of the student for the period of enrollment for which he or she was charged.

(vii) To eliminate outstanding balances on Federal Perkins loans received by the student for the period of enrollment for which he or she was charged.

(viii) To eliminate any amount of Federal Pell Grants awarded to the student for the period of enrollment for which he or she was charged.

(ix) To eliminate any amount of Federal SEOG Program aid awarded to the student for the period of enrollment for which he or she was charged.

(x) To eliminate any amount of other assistance awarded to the student under programs authorized by Title IV of the HEA for the period of enrollment for which he or she was charged.

(xi) To repay required refunds of other Federal, State, private, or institutional student financial assistance received by the student.

(xii) To the student.

(2) The institution must apply the allocation policy described in paragraph (h)(1) of this section consistently to all students who have received Title IV, HEA program assistance and must conform that policy to the following:

(i) No amount of the refund or of the overpayment may be allocated to the FWS Program.

(ii) No amount of overpayment may be allocated to the Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Direct Stafford Loan or Federal Direct PLUS Program.

(iii) The amount of the Title IV, HEA program portion of the refund allocated to the Federal Stafford Loan, Federal PLUS, Federal SLS programs must be returned to the appropriate borrower's lender by the institution in accordance with program regulations (34 CFR part 682).

(iv) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, and Federal SLS programs must be returned to the appropriate program account or accounts by the institution within 30 days of the date that the student officially withdraws, is expelled, or the institution determines that a student has unofficially withdrawn.

(v) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the FWS, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Direct Stafford, and Federal Direct PLUS programs must be returned to the appropriate program account or accounts within 30 days of the date that the student repays the overpayment.

(i) *Financial aid.* For purposes of this section "financial aid" is assistance that a student has been or will be awarded (including Federal PLUS loans and Federal Direct PLUS loans received on the student's behalf) from Federal; State; institutional; or other scholarship, grant, or loan programs.

(j) *Refund dates.* (1) *Withdrawal date.* (i) Except as provided in paragraph (j)(1)(ii) and (iii) of this section, a student's withdrawal date is the earlier of--

(A) The date that the student notifies an institution of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(B) If the student drops out of the institution without notifying the institution (does not withdraw officially), the last recorded date of class attendance by the student, as documented by the institution.

(ii) If the student does not return to the institution at the expiration of an approved leave of absence under paragraph (j)(2) of this section, or takes a leave of absence that is not approved under paragraph (j)(2) of this section, the student's withdrawal date is the last recorded date of class attendance by the student, as documented by the institution.

(iii) If the student is enrolled in an educational program that consists predominantly of correspondence courses, the student's withdrawal date is normally the date of the last lesson submitted by the student, if the student failed to submit the subsequent lesson in accordance with the schedule for lessons established by the institution. However, if the student establishes in writing, within 60 days of the date of the last lesson that he or she submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the institution may restore that student to "in school" status for purposes of funds received under the Title IV, HEA programs. The institution may not grant the student more than one restoration to "in school" status on this basis.

(2) *Approved leave of absence*. A student who has been granted a leave of absence by an institution is not considered to have withdrawn from the institution and is considered to be on an "approved leave of absence" for purposes of this section (and, for a Title IV, HEA program loan borrower, for purposes of terminating the student's in-school status) under the following conditions--

(i) In any twelve-month period, the institution may grant a single leave of absence to a student, not to exceed 60 days;

(ii) The student must make a written request to be granted a leave of absence; and

(iii) The leave of absence may not involve additional charges by the institution to the student.

(3) *Timely determination of withdrawal for students who drop out*. An institution must determine the withdrawal date for a student who drops out within 30 days after the expiration of the earlier of the--

(i) Period of enrollment for which the student has been charged;

(ii) Academic year in which the student withdrew;

(iii) Educational program from which the student withdrew.

(4) *Timely payment*. An institution shall pay a refund that is due to a student--

(i) If a student officially withdraws or is expelled, within 30 days after the student's withdrawal date;

(ii) If a student drops out, within 30 days of the earliest of the--

(A) Date on which the institution determines that the student dropped out;

(B) Expiration of the academic term in which the student withdrew; or

(C) Expiration of the period of enrollment for which the student has been charged;

(iii) If a student--

(A) Does not return to the institution at the expiration of an approved leave of absence under paragraph (j)(2) of this section, within 30 days of the earlier of the date of expiration of the leave of absence or the date the student notifies the institution that the student will not be returning to the institution after the expiration of an approved leave of absence;

(B) Is taking a leave of absence that is not approved under paragraph (j)(2) of this section, within 30 days after the last recorded date of class attendance by the student, as documented by the institution.

(Authority: 20 U.S.C. 1091b, 1092, 1094)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section amended November 29, 1994, effective July 1, 1995. (d)(1) amended June 30, 1995, effective July 31, 1995. OMB control number added August 15, 1995, effective August 15, 1995. (h)(1) and (d)(1)(i) amended December 1, 1995, effective July 1, 1996. (g)(3)(i) amended November 27, 1996, effective July 1, 1997.

Sec. 668.23 Compliance audits and audited financial statements.

(a) *General*. (1) *Independent auditor*. For purposes of this section, the term "independent auditor" refers to an independent certified public accountant or a government auditor. To conduct an audit under this section, a government auditor must meet the Government Auditing Standards qualification and independence standards, including standards related to organizational independence.

(2) *Institutions*. An institution that participates in any title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution's general purpose financial statements.

(3) *Third-party servicers*. Except as provided under this part or 34 CFR part 682, with regard to complying with the provisions under this section a third-party servicer must follow the procedures contained in the audit guides developed by and available from the Department of Education's Office of Inspector General. A third-party servicer is defined under Sec. 668.2 and 34 CFR 682.200.

(4) *Submission deadline*. Except as provided by the Single Audit Act, Chapter 75 of title 31, United States Code, an institution must submit annually to the Secretary its compliance audit and its audited financial statements no later than six months after the last day of the institution's fiscal year.

(5) *Audit submission requirements*. In general, the Secretary considers the compliance audit and audited financial statement submission requirements of this section to be satisfied by an audit conducted in accordance with the Office of Management and Budget Circular A-133, "Audits of Institutions

of Higher Education and Other Nonprofit Organizations"; Office of Management and Budget Circular A-128, "Audits of State and Local Governments", or the audit guides developed by and available from the Department of Education's Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission. (Both OMB circulars are available by calling OMB's Publication Office at (202) 395-7332, or they can be obtained in electronic form on the OMB Home Page (http://www.whitehouse.gov).

(b) *Compliance audits for institutions.* (1) An institution's compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution's last compliance audit.

(2) The compliance audit required under this section must be conducted in accordance with--

(i) The general standards and the standards for compliance audits contained in the U.S. General Accounting Office's (GAO's) Government Auditing Standards. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); and

(ii) Procedures for audits contained in audit guides developed by, and available from, the Department of Education's Office of Inspector General.

(3) The Secretary may require an institution to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(c) *Compliance audits for third-party servicers.* (1) A third-party servicer that administers title IV, HEA programs for institutions does not have to have a compliance audit performed if--

(i) The servicer contracts with only one institution; and

(ii) The audit of that institution's administration of the title IV, HEA programs involves every aspect of the servicer's administration of that program for that institution.

(2) A third-party servicer that contracts with more than one participating institution may submit a compliance audit report that covers the servicer's administration of the title IV, HEA programs for all institutions with which the servicer contracts.

(3) A third-party servicer must submit annually to the Secretary its compliance audit no later than six months after the last day of the servicer's fiscal year.

(4) The Secretary may require a third-party servicer to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(d) *Audited financial statements.* (1) *General.* To enable the Secretary to make a determination of financial responsibility, an institution must, to the extent requested by the Secretary, submit to the Secretary a set of financial statements for its latest complete fiscal year, as well as any other documentation the Secretary deems necessary to make that determination. Financial statements submitted to the Secretary must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, and other guidance contained in the Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations"; Office of Management and Budget Circular A-128, "Audits of State and Local Governments"; or in audit guides developed by, and available from, the Department of Education's Office of Inspector General, whichever is applicable. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in the Statement of Financial Accounting Standards (SFAS) 57. The disclosure requirements under this provision extend beyond those of SFAS 57 to include all related parties and a level of detail that would enable to Secretary to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

(2) *Submission of additional financial statements.* To the extent requested by the Secretary in determining whether an institution is financially responsible, the Secretary may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Secretary.

(3) *Audited financial statements for foreign institutions.* A foreign institution must submit--

(i) Audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country, if the institution received less than $500,000 U.S. in title IV, HEA program funds during its most recently completed fiscal year; or

(ii) Audited financial statements translated to meet the requirements of paragraph (d) of this section, if the institution received $500,000 U.S. or more in title IV, HEA program funds during its most recently completed fiscal year.

(4) *Disclosure of title IV HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in accordance with Sec. 600.5(d).

(5) *Audited financial statements for third-party servicers.* A third-party servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's programs, as provided under 34 CFR part 682, must submit annually an audited financial statement. This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards and other guidance contained in audit guides issued by the Department of Education's Office of Inspector General.

(e) *Access to records.* (1) An institution or a third-party servicer that has a compliance or financial statement audit conducted under this section must--

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review that audit, including the right to obtain copies of those records or documents; and

(ii) Require an individual or firm conducting the audit to give the Secretary and the Inspector General access to records, audit work papers, or other documents necessary to review that audit, including the right to obtain copies of those records, work papers, or documents.

(2) An institution must give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer's compliance or financial statement audit, including the right to obtain copies of those records or documents.

(f) *Determination of liabilities.* (1) Based on the audit finding and the institution's or third-party servicer's response, the Secretary determines the amount of liability, if any, owed by the institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution's title IV, HEA programs, the servicer must notify each institution under whose contract the servicer owes a liability of that determination. The servicer must also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

(g) *Repayments.* (1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary's notification, unless--

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (f) and (g)(1) of this section--

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because--

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully available through the completion of available appeal proceedings; or

(ii) The Secretary may use administrative offset pursuant to 34 CFR part 30 to collect the funds owed under the procedures of this section.

(3) If, under the proceedings in subpart H, liabilities asserted in the Secretary's notification, under paragraph (e)(1) of this section, to the institution or third-party servicer are upheld, the institution or third-party servicer must repay those funds at the direction of the Secretary within 30 days of the final decision under subpart H of this part unless--

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (g)(2) of this section.

(4) An institution is held responsible for any liability owed by the institution's third-party servicer for a violation incurred in servicing any aspect of that institution's participation in the title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141, and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

Note: Section amended November 29, 1996, effective July 1, 1997. (f) removed and (g) and (h) redesignated as (f) and (g), respectively, November 25, 1997, effective July 1, 1998.

Sec. 668.24 Record retention and examinations.

(a) *Program records.* An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document--

(1) Its eligibility to participate in the title IV, HEA programs;

(2) The eligibility of its educational programs for title IV, HEA program funds;

(3) Its administration of the title IV, HEA programs in accordance with all applicable requirements;

(4) Its financial responsibility, as specified in this part;

(5) Information included in any application for title IV, HEA program funds; and

(6) Its disbursement and delivery of title IV, HEA program funds.

(b) *Fiscal records.* (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.

(2) An institution shall establish and maintain on a current basis--

(i) Financial records that reflect each HEA, title IV program transaction; and

(ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.

(c) *Required records.* (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to--

(i) The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds;

(ii) Application data submitted to the Secretary, lender, or guaranty agency by the institution on behalf of the student or parent;

(iii) Documentation of each student's or parent borrower's eligibility for title IV, HEA program funds;

(iv) Documentation relating to each student's or parent borrower's receipt of title IV, HEA program funds, including but not limited to documentation of--

(A) The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of the grant, loan, or FWS award;

(B) The date and amount of each disbursement or delivery of grant or loan funds, and the date and amount of each payment of FWS wages;

(C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student; and

(D) The payment of any refund or overpayment to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

(v) Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations;

(vi) Reports and forms used by the institution in its participation in a title IV, HEA program, and any records needed to verify data that appear in those reports and forms; and

(vii) Documentation supporting the institution's calculations of its completion or graduation rates under Secs. 668.46 and 668.49.

(2) In addition to the records required under this part--

(i) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for documentation of repayment history for that program;

(ii) Participants in the FWS Program shall follow procedures established in 34 CFR 675.19 for documentation of work, earnings, and payroll transactions for that program; and

(iii) Participants in the FFEL Program shall follow procedures established in 34 CFR 682.610 for documentation of additional loan record requirements for that program.

(d) *General.* (1) An institution shall maintain required records in a systematically organized manner.

(2) An institution shall make its records readily available for review by the Secretary or the Secretary's authorized representative at an institutional location designated by the Secretary or the Secretary's authorized representative.

(3) An institution may keep required records in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats, provided that--

(i) Except for the records described in paragraph (d)(3)(ii) of this section, all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Secretary;

(ii) An institution shall maintain the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds in the format in which it was received by the institution, except that the SAR may be maintained in an imaged media format;

(iii) Any imaged media format used to maintain required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and, when printed, this copy must be approximately the same size as the original document;

(iv) Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format; and

(v) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for maintaining the original promissory notes and repayment schedules for that program.

(4) If an institution closes, stops providing educational programs, is terminated or suspended from the title IV, HEA programs, or undergoes a change of ownership that results in a change of control as described in 34 CFR 600.31, it shall provide for--

(i) The retention of required records; and

(ii) Access to those records, for inspection and copying, by the Secretary or the Secretary's authorized representative, and, for a school participating in the FFEL Program, the appropriate guaranty agency.

(e) *Record retention.* Unless otherwise directed by the Secretary--

(1) An institution shall keep records relating to its administration of the Federal Perkins Loan, FWS, FSEOG, or Federal Pell Grant Program for three years after the end of the award year for which the aid was awarded and disbursed under those programs, provided that an institution shall keep--

(i) The Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, FSEOG, and FWS Programs (FISAP), and any records necessary to support the data contained in the FISAP, including "income grid information," for three years after the end of the award year in which the FISAP is submitted; and

(ii) Repayment records for a Federal Perkins loan, including records relating to cancellation and deferment requests, in accordance with the provisions of 34 CFR 674.19;

(2)(i) An institution shall keep records relating to a student or parent borrower's eligibility and participation in the FFEL or Direct Loan Program for three years after the end of the award year in which the student last attended the institution; and

(ii) An institution shall keep all other records relating to its participation in the FFEL or Direct Loan Program, including records of any other reports or forms, for three years after the end of the award year in which the records are submitted; and

(3) An institution shall keep all records involved in any loan, claim, or expenditure questioned by a title IV, HEA program audit, program review, investigation, or other review until the later of--

(i) The resolution of that questioned loan, claim, or expenditure; or

(ii) The end of the retention period applicable to the record.

(f) *Examination of records.* (1) An institution that participates in any title IV, HEA program and the institution's third-party servicer, if any, shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the institution's accrediting agency, in the conduct of audits, investigations, program reviews, or other reviews authorized by law.

(2) The institution and servicer must cooperate by--

(i) Providing timely access, for examination and copying, to requested records, including but not limited to computerized records and records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any title IV, HEA program funds, and to any pertinent books, documents, papers, or computer programs; and

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the title IV, HEA programs for the purpose of obtaining relevant information.

(3) The Secretary considers that an institution or servicer has failed to provide reasonable access to personnel under paragraph (f)(2)(ii) of this section if the institution or servicer--

(i) Refuses to allow those personnel to supply all relevant information;

(ii) Permits interviews with those personnel only if the institution's or servicer's management is present; or

(iii) Permits interviews with those personnel only if the interviews are tape recorded by the institution or servicer.

(4) Upon request of the Secretary, or a lender or guaranty agency in the case of a borrower under the FFEL Program, an institution or servicer promptly shall provide the requester with any information the institution or servicer has respecting the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of title IV funds who attends or attended the institution.

(Authority: 20 U.S.C. 1070a, 1070b, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087, 1087a et seq., 1087cc, 1087hh, 1088, 1094, 1099c, 1141, 1232f; 42 U.S.C. 2753; and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

Note: Section amended November 27, 1996, effective July 1, 1997.

Sec. 668.25 Contracts between an institution and a third-party servicer.

(a) An institution may enter into a written contract with a third-party servicer for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(b) Subject to the provisions of paragraph (d) of this section, a third-party servicer is eligible to enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(c) In a contract with an institution, a third-party servicer shall agree to--

(1) Comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement to use any funds that the servicer administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program;

(2) Refer to the Office of Inspector General of the Department of Education for investigation any information indicating there is reasonable cause to believe that the institution might have engaged in fraud or other criminal misconduct in connection with the institution's administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred are--

(i) False claims by the institution for Title IV, HEA program assistance;

(ii) False claims of independent student status;

(iii) False claims of citizenship;

(iv) Use of false identities;

(v) Forgery of signatures or certifications; and

(vi) False statements of income;

(3) Be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, and any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(4) In the case of a third-party servicer that disburses funds (including funds received under the Title IV, HEA

programs) or delivers Federal Stafford Loan or Federal SLS Program proceeds to a student--

(i) Confirm the eligibility of the student before making that disbursement or delivering those proceeds. This confirmation must include, but is not limited to, any applicable information contained in the records required under Sec. 668.24; and

(ii) Calculate and pay refunds and repayments due a student, the Title IV, HEA program accounts, and the student's lender under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs in accordance with the institution's refund policy, the provisions of Sec. 668.21 and Sec. 668.22, and applicable program regulations; and

(5) If the servicer or institution terminates the contract, or if the servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code, return to the institution all--

(i) Records in the servicer's possession pertaining to the institution's participation in the program or programs for which services are no longer provided; and

(ii) Funds, including Title IV, HEA program funds, received from or on behalf of the institution or the institution's students, for the purposes of the program or programs for which services are no longer provided.

(d) A third-party servicer may not enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program, if--

(1)(i) The servicer has been limited, suspended, or terminated by the Secretary within the preceding five years;

(ii) The servicer has had, during the servicer's two most recent audits of the servicer's administration of the Title IV, HEA programs, an audit finding that resulted in the servicer's being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV, HEA programs for any award year; or

(iii) The servicer has been cited during the preceding five years for failure to submit audit reports required under Title IV of the HEA in a timely fashion; and

(2)(i) In the case of a third-party servicer that has been subjected to a termination action by the Secretary, either the servicer, or one or more persons or entities that the Secretary determines (under the provisions of Sec. 668.15) exercise substantial control over the servicer, or both, have not submitted to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the servicer's potential liabilities arising from the servicer's administration of the Title IV, HEA programs; and

(ii) One or more persons or entities that the Secretary determines (under the provisions of Sec. 668.15) exercise substantial control over the servicer have not agreed to be jointly or severally liable for any liabilities arising from the servicer's administration of the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e)(1)(i) An institution that participates in a Title IV, HEA program shall notify the Secretary within 10 days of the date that--

(A) The institution enters into a new contract or significantly modifies an existing contract with a third-party servicer to administer any aspect of that program;

(B) The institution or a third-party servicer terminates a contract for the servicer to administer any aspect of that program; or

(C) A third-party servicer that administers any aspect of the institution's participation in that program stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code.

(ii) The institution's notification must include the name and address of the servicer.

(2) An institution that contracts with a third-party servicer to administer any aspect of the institution's participation in a Title IV, HEA program shall provide to the Secretary, upon request, a copy of the contract, including any modifications, and provide information pertaining to the contract or to the servicer's administration of the institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section added April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994. (c)(4)(i) amended November 27, 1996, effective July 1, 1997.

Sec. 668.26 End of an institution's participation in the Title IV, HEA programs.

(a) An institution's participation in a Title IV, HEA program ends on the date that--

(1) The institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students;

(2) The institution loses its institutional eligibility under 34 CFR part 600;

(3) The institution's participation is terminated under the proceedings in subpart G of this part;

(4) The institution's period of participation, as specified under Sec. 668.13, expires, or the institution's provisional certification is revoked under Sec. 668.13;

(5) The institution's program participation agreement is terminated or expires under Sec. 668.14;

(6) The institution's participation ends under 668.17(c); or

(7) The Secretary receives a notice from the appropriate State postsecondary review entity designated under 34 CFR part 667 that the institution's participation should be withdrawn.

(b) If an institution's participation in a Title IV, HEA program ends, the institution shall--

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the date that the participation ends--

(i) All financial, performance, and other reports required by appropriate Title IV, HEA program regulations; and

(ii) A letter of engagement for an independent audit of all funds that the institution received under that program, the report of which shall be submitted to the Secretary within 45 days after the date of the engagement letter;

(3) Inform the Secretary of the arrangements that the institution has made for the proper retention and storage for a minimum of three years of all records concerning the administration of that program;

(4) If the institution's participation in the Federal Perkins Loan or FDSL Program ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under that program;

(5) If the institution's participation in the NEISP or SSIG Program ended--

(i) Inform immediately the State in which the institution is located of that fact; and

(ii) Notwithstanding paragraphs (c) through (e) of this section, follow the instructions of that State concerning the end of that participation;

(6) If the institution's participation in all the Title IV, HEA programs ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under the National Defense/Direct Student Loan and ICL programs; and

(7) Continue to distribute refunds according to Sec. 668.22.

(c) If an institution closes or stops providing educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students, the institution shall--

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, any unexpended funds that the institution has received under the Title IV, HEA programs for attendance at the institution, less the institution's administrative allowance, if applicable; and

(2) Return to the appropriate lenders any Federal Stafford Loan and Federal SLS program proceeds that the institution has received but not delivered to, or credited to the accounts of, students attending the institution.

(d)(1) An institution may use funds that it has received under the Federal Pell Grant or PAS Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if--

(i) The institution's participation in that Title IV, HEA program ends during a payment period;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Stafford or Federal SLS loan to satisfy any unpaid commitment made to the student under the Federal Stafford Loan or Federal SLS Program only if--

(i) The institution's participation in that Title IV, HEA program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation;

(iv) The commitment was made for attendance during that period of enrollment; and

(v) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(3) An institution may use funds that it has received under the FDSL Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Direct Student loan only if--

(i) The institution's participation in the FDSL Program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment; and

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(e) For the purposes of this section--

(1) A commitment under the Federal Pell Grant and PAS programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report;

(2) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid; and

(3) A commitment under the Federal Stafford and Federal SLS programs occurs when the Secretary or a guaranty agency notifies the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094, 1099a-3)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Redesignated from Sec. 668.25 to Sec. 668.26 and amended April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994. (b)(3) amended November 27, 1996, effective July 1, 1997.

Subpart C--Student Eligibility

Note: Subpart amended December 1, 1995, effective July 1, 1996.

Sec. 668.31 Scope.

This subpart contains rules by which a student establishes eligibility for assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

(Authority: 20 U.S.C. 1091)

Sec. 668.32 Student eligibility--general.

A student is eligible to receive title IV, HEA program assistance if the student--

(a)(1) (i) Is a regular student enrolled, or accepted for enrollment, in an eligible program at an eligible institution;

(ii) For purposes of the FFEL and Direct Loan programs, is enrolled for no longer than one twelve-month period in a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Federal Perkins Loan, FWS, FFEL, and Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

(2) For purposes of the FFEL and Direct Loan programs, is at least a half-time student;

(b) Is not enrolled in either an elementary or secondary school;

(c)(1) For purposes of the Federal Pell Grant, FSEOG, and SSIG programs, does not have a baccalaureate or first professional degree; and

(2)(i) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated; and

(ii) For purposes of the Federal Pell Grant program, is not incarcerated in a Federal or State penal institution;

(d) Satisfies the citizenship and residency requirements contained in Sec. 668.33 and subpart I of this part;

(e)(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part; or

(3) Is enrolled in an eligible institution that participates in a State "process" approved by the Secretary under subpart J of this part;

(f) Maintains satisfactory progress in his or her course of study according to the institution's published standards of satisfactory progress that satisfy the provisions of Sec. 668.16(e), and, if applicable, the provisions of Sec. 668.34;

(g) Except as provided in Sec. 668.35--

(1) Is not in default, and certifies that he or she is not in default, on a loan made under any title IV, HEA loan program;

(2) Has not obtained loan amounts that exceed annual or aggregate loan limits made under any title IV, HEA loan program;

(3) Does not have property subject to a judgment lien for a debt owed to the United States; and

(4) Is not liable for a grant or Federal Perkins loan overpayment. A student receives a grant or Federal Perkins loan overpayment if the student received grant or Federal Perkins loan payments that exceeded the amount he or she was eligible to receive; or if the student withdraws, that exceeded the amount he or she was entitled to receive for non-institutional charges;

(h) Files a Statement of Educational Purpose in accordance with the instructions of the Secretary, or in the case of a loan made under the FFEL Program, with the lender;

(i) Has a correct social security number as determined under Sec. 668.36, except that this requirement does not apply to students who are residents of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau;

(j) Satisfies the Selective Service registration requirements contained in Sec. 668.37, and, if applicable, satisfies the requirements of Sec. 668.38 and Sec. 668.39 involving enrollment in telecommunication and correspondence courses and a study abroad program, respectively; and

(k) Satisfies the program specific requirements contained in--

(1) 34 CFR 674.9 for the Federal Perkins Loan program;

(2) 34 CFR 675.9 for the FWS program;

(3) 34 CFR 676.9 for the FSEOG program;

(4) 34 CFR 682.201 for the FFEL programs;

(5) 34 CFR 685.200 for the Federal Direct Student Loan programs;

(6) 34 CFR 690.75 for the Federal Pell Grant program; and

(7) 34 CFR 692.40 for the SSIG program.

(Authority: 20 U.S.C. 1091, 28 U.S.C. 3201(e))

Sec. 668.33 Citizenship and residency requirements.

(a) Except as provided in paragraph (b) of this section, to be eligible to receive title IV, HEA program assistance, a student must--

(1) Be a citizen or national of the United States; or

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she--

(i) Is a permanent resident of the United States; or

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(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(b) (1) A citizen of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends an eligible institution in a State, or a public or nonprofit private eligible institution of higher education in those jurisdictions.

(2) A student who satisfies the requirements of paragraph (a) of this section is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends a public or nonprofit private eligible institution of higher education in the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau.

(c) (1) If a student asserts that he or she is a citizen of the United States on the Free Application for Federal Student Aid (FAFSA), the Secretary attempts to confirm that assertion under a data match with the Social Security Administration. If the Social Security Administration confirms the student's citizenship, the Secretary reports that confirmation to the institution and the student.

(2) If the Social Security Administration does not confirm the student's citizenship assertion under the data match with the Secretary, the student can establish U.S. citizenship by submitting documentary evidence of that status to the institution. Before denying title IV, HEA assistance to a student for failing to establish citizenship, an institution must give a student at least 30 days notice to produce evidence of U.S. citizenship.

(Authority: 20 U.S.C. 1091, 5 U.S.C. 552a)

Sec. 668.34 Satisfactory progress.

(a) If a student is enrolled in an program of study of more than two academic years, to be eligible to receive title IV, HEA program assistance after the second year, in addition to satisfying the requirements contained in Sec. 668.32(f), the student must be making satisfactory under the provisions of paragraphs (b), (c) and (d) of this section.

(b) A student is making satisfactory progress if, at the end of the second year, the student has a grade point average of at least a "C" or its equivalent, or has academic standing consistent with the institution's requirements for graduation.

(c) An institution may find that a student is making satisfactory progress even though the student does not satisfy the requirements in paragraph (b) of this section, if the institution determines that the student's failure to meet those requirements is based upon--

(1) The death of a relative of the student;

(2) An injury or illness of the student; or

(3) Other special circumstances.

(d) If a student is not making satisfactory progress at the end of the second year, but at the end of a subsequent grading period comes into compliance with the institution's requirements for graduation, the institution may consider the student as making satisfactory progress beginning with the next grading period.

(e) At a minimum, an institution must review a student's academic progress at the end of each year.

(Authority: 20 U.S.C. 1091(d))

Sec. 668.35 Student debts under the HEA and to the U.S.

(a) A student who is in default on a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student--

(1) Repays the loan in full; or

(2) (i) Makes arrangements, that are satisfactory to the holder of the loan and in accordance with the individual title IV, HEA loan program regulations, to repay the loan balance; and

(ii) Makes at least six consecutive monthly payments under those arrangements.

(b) A student who is not in default on a loan made under a title IV, HEA loan program, but has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeds the annual or aggregate loan limits under that program, may nevertheless be eligible to receive title IV, HEA program assistance if the student--

(1) Repays in full the excess loan amount; or

(2) Makes arrangements, satisfactory to the holder of the loan, to repay that excess loan amount.

(c) A student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if the student--

(1) Pays the overpayment in full; or

(2) Makes arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment.

(d) A student who has property subject to a judgement lien for a debt owed to the United States may nevertheless be eligible to receive title IV, HEA program assistance if the student--

(1) Pays the debt in full; or

(2) Makes arrangements, satisfactory to the United States, to pay the debt.

(e) (1) A student is not liable for a Federal Pell Grant overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent Federal Pell Grant payments in that same award year.

(2) A student is not liable for a FSEOG or SSIG overpayment or Federal Perkins loan overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant) payments in that same award year.

(f) A student who otherwise is in default on a loan made under a title IV, HEA loan program, or who otherwise owes an overpayment on a title IV, HEA program grant or Federal Perkins loan, is not considered to be in default or owe an overpayment if the student--

(1) Obtains a judicial determination that the debt has been discharged or is dischargeable in bankruptcy; or

(2) Demonstrates to the satisfaction of the holder of the debt that--

(i) When the student filed the petition for bankruptcy relief, the loan, or demand for the payment of the overpayment, had been outstanding for the period required under 11 U.S.C. 523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m); and

(ii) The debt otherwise qualifies for discharge under applicable bankruptcy law.

(Authority: 20 U.S.C. 1091 and 11 U.S.C. 523 and 525)

Sec. 668.36 Social security number.

(a) (1) Except for residents of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, the Secretary attempts to confirm the social security number a student provides on the Free Application for Federal Student Aid (FAFSA) under a data match with the Social Security Administration. If the Social Security Administration confirms that number, the Secretary notifies the institution and the student of that confirmation.

(2) If the student's verified social security number is the same number as the one he or she provided on the FAFSA, and the institution has no reason to believe that the verified social security number is inaccurate, the institution may consider the number to be accurate.

(3) If the Social Security Administration does not verify the student's social security number on the FAFSA, or the institution has reason to believe that the verified social security number is inaccurate, the student can provide evidence to the institution, such as the student's social security card, indicating the accuracy of the student's social security number. An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to produce that evidence.

(4) An institution may not deny, reduce, delay, or terminate a student's eligibility for assistance under the title IV, HEA programs because verification of that student's social security number is pending.

(b) (1) An institution may not disburse any title IV, HEA program funds to a student until the institution is satisfied that the student's reported social security number is accurate.

(2) The institution shall ensure that the Secretary is notified of the student's accurate social security number if the student demonstrates the accuracy of a social security number that is not the number the student included on the FAFSA.

(c) If the Secretary determines that the social security number provided to an institution by a student is incorrect, and that student has not provided evidence under paragraph (a)(3) of this section indicating the accuracy of the social security number, and a loan has been guaranteed for the student under the FFEL program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty may not be voided or otherwise nullified before the date that the lender and the guaranty agency receive the notice.

(d) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against--

(1) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

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(2) Any student with respect to any error in a social security number, unless the error was the result of fraud on the part of the student.

(Authority: 20 U.S.C. 1091)

Sec. 668.37 Selective Service registration.

(a) (1) To be eligible to receive title IV, HEA program funds, a male student who is subject to registration with the Selective Service must register with the Selective Service.

(2) A male student does not have to register with the Selective Service if the student--

(i) Is below the age of 18, or was born before January 1, 1960;

(ii) Is enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(A) The Citadel, Charleston, South Carolina;

(B) North Georgia College, Dahlonega, Georgia;

(C) Norwich University, Northfield, Vermont; or

(D) Virginia Military Institute, Lexington, Virginia; or

(iii) Is a commissioned officer of the Public Health Service or a member of the Reserve of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act.

(b) (1) When the Secretary processes a male student's FAFSA, the Secretary determines whether the student is registered with the Selective Service under a data match with the Selective Service.

(2) Under the data match, Selective Service reports to the Secretary whether its records indicate that the student is registered, and the Secretary reports the results of the data match to the student and the institution the student is attending.

(c) (1) If the Selective Service does not confirm through the data match, that the student is registered, the student can establish that he--

(i) Is registered;

(ii) Is not, or was not required to be, registered;

(iii) Has registered since the submission of the FAFSA; or

(iv) Meets the conditions of paragraph (d) of this section.

(2) An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to provide evidence to establish the condition described in paragraph (c)(1) of this section.

(d) An institution may determine that a student, who was required to, but did not register with the Selective Service, is not ineligible to receive title IV, HEA assistance for that reason, if the student can demonstrate by submitting clear and unambiguous evidence to the institution that--

(1) He was unable to present himself for registration for reasons beyond his control such as hospitalization, incarceration, or institutionalization; or

(2) He is over 26 and when he was between 18 and 26 and required to register--

(i) He did not knowingly and willfully fail to register with the Selective Service; or

(ii) He served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty," showing military service with other than the reserve forces and National Guard.

(e) For purposes of paragraph (d)(2)(i) of this section, an institution may consider that a student did not knowingly and willfully fail to register with the Selective Service only if--

(1) The student submits to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register; and

(2) The institution does not have uncontroverted evidence that the student knowingly and willfully failed to register.

(f) (1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has registered with Selective Service may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request--

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who--

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (f)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (f)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(g) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(h) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(Authority: 20 U.S.C. 1091 and 50 App. 462)

(a)(2)(iii) amended February 1, 1996, effective July 1, 1996.

Sec. 668.38 Enrollment in telecommunications and correspondence courses.

(a) If a student is enrolled in correspondence courses, the student is eligible to receive title IV, HEA program assistance only if the correspondence courses are part of a program that leads to an associate, bachelor's, or graduate degree.

(b) (1) For purposes of this provision, the Secretary considers that a student enrolled in a "telecommunications course" is enrolled in a correspondence course unless the total number of telecommunication and correspondence courses the institution provides is fewer than 50 percent of the courses the institution provides during an award year and the student is enrolled in a program that leads to an associate, bachelor's, or graduate degree.

(2) In making the determination required under paragraph (b)(1) of this section, the institution shall use its latest complete award year, and shall calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

(Authority: 20 U.S.C. 1091)

Sec. 668.39 Study abroad programs.

A student enrolled in a program of study abroad is eligible to receive title IV, HEA program assistance if--

(a) The student remains enrolled as a regular student in an eligible program at an eligible institution during his or her program of study abroad; and

(b) The eligible institution approves the program of study abroad for academic credit. However, the study abroad program need not be required as part of the student's eligible degree program.

(Authority: 20 U.S.C. 1091(o))

Subpart D--Student Consumer Information Services

Sec. 668.41 Reporting and disclosure of information.

(a) Each institution participating in any Title IV, HEA program shall disseminate to all enrolled students, and to prospective students upon request, through appropriate publications and mailing, information concerning--

(1) The institution (see Sec. 668.44); and

(2) Any student financial assistance available to students enrolled in the institution (see Sec. 668.43).

(3) The institution's completion or graduation rate and its transfer-out rate, produced in accordance with Sec. 668.46.

(b)(1) Each institution participating in any title IV, HEA program, when it offers a potential student-athlete athletically-related student aid, shall provide to the potential student-athlete, and his or her parents, high school coach, and guidance counselor, the information on completion and graduation rates, transfer-out rates, and other data produced in accordance with Sec. 668.49.

(2) The institution shall also submit to the Secretary the report produced in accordance with Sec. 668.49 by July 1, 1997 and by every July 1 every year thereafter.

(c) The following definitions apply to this subpart:

Athletically-related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time freshman student means an entering freshman who has never attended any institution of higher education. Includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years (8 semesters or trimesters, or 12 quarters, excluding summer terms) for a bachelor's degree in a standard term-based institution, two years (4 semesters or trimesters, or 6 quarters, excluding summer terms) for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Prospective students means individuals who have contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of this section only, means students enrolled in a 4- or 5-year bachelor's degree program, an associate's degree program, or a vocational or technical program below the baccalaureate.

(d) Reserved.

(e)(1)(i) An institution of higher education subject to Sec. 668.48 shall make available to students, prospective students, and the public upon request the information contained in the report described in Sec. 668.48(c). The institution shall make the information easily accessible to students, prospective students, and the public and shall provide the information promptly to anyone who requests the information.

(ii) The institution shall inform all students and prospective students of their right to request that information.

(2) Each institution shall make available its first report under Sec. 668.48 not later than October 1, 1996, and make available each subsequent report no later than October 15 each year thereafter.

(Authority: 20 U.S.C. 1092(g)(3) and (5))

(Approved by the Office of Management and Budget under control number 1840-0711 and under control number 1840-0719))

Note: Heading and authority citation revised; (c) and (d) reserved; and (e) added November 29, 1995, effective July 1, 1996. (a)(3) added; (b) redesignated as (c); new (b) added; and redesignated (c) amended December 1, 1995, effective July 1, 1996. OMB control numbers added June 13, 1996, effective July 1, 1996.

Sec. 668.42 Preparation and dissemination of materials.

For each award year in which it participates in any Title IV, HEA program, an institution shall--

(a) If necessary, prepare and publish materials covering the topics set forth in Sec. 668.43 and Sec. 668.44; and

(b) Make those materials available through appropriate publications and mailings to--

(1) All currently enrolled students; and

(2) Any prospective student, upon request of that student.

(Authority: 20 U.S.C. 1092)

Sec. 668.43 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective student's under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe--

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding--

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans;

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package; and

(6) The institution shall provide and collect exit counseling information as required by 34 CFR 674.42 for borrowers under the Federal Perkins Loan Program, by 34 CFR 685.303 for borrowers under the Federal Direct Student Loan Program, and by 34 CFR 682.604 for borrowers under the Federal Stafford Loan and Federal SLS programs.

(Authority: 20 U.S.C. 1092)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: (c)(4) and (c)(5) amended and (c)(6) added April 29, 1994, effective July 1, 1994.

Sec. 668.44 Institutional Information.

(a) Institutional information that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to--

(1) The cost of attending the institution, including--

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus; and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding the distribution of any refund due to the Title IV, HEA programs as required by Sec. 668.22;

(4) The academic program of the institution, including--

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(6) A description of any special facilities and services available to handicapped students;

(7) The titles of persons designated under Sec. 668.45 and information regarding how and where those persons may be contacted; and

(8) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the Title IV, HEA programs.

(b) The institution shall make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Authority: 20 U.S.C. 1082, 1092)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: (c) through (f) removed and (a)(3) amended July 31, 1991, effective September 14, 1991. (a)(6) and (a)(7) amended and (a)(8) added April 29, 1994, effective July 1, 1994.

Sec. 668.45 Availability of employees for information dissemination purposes.

(a) *Availability*. (1) Except as provided in paragraph (b) of this section each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in Sec. 668.43 and 668.44.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver*. (1) The Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the Title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of Title IV, HEA program recipients is too small, the Secretary considers whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(Authority: 20 U.S.C. 1092)

Sec. 668.46 Information on completion or graduation rates.

(a)(1) An institution shall prepare annually information regarding the completion or graduation rate and the transfer-out rate of the certificate- or degree-seeking, full-time undergraduate students entering that institution on or after July 1, 1996.

(2)(i) An institution that offers a predominant number of programs based on semesters, trimesters, or quarters shall base its completion or graduation rate and transfer-out rate calculations on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term.

(ii) An institution not covered by the provisions of paragraph (a)(2)(i) of this section shall base its completion or graduation rate and transfer-out rate calculations on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between every July 1st of one year and June 30th of the following year.

(3)(i) For purposes of the completion or graduation rate and transfer-out rate calculations required in paragraph (a)(1) of this section, an institution shall count as entering students only first-time freshman students, as defined in Sec. 668.41(c).

(ii) An institution may also calculate the completion or graduation rate of students who transfer into the institution as a separate, supplemental rate.

(4)(i) An institution covered by the provisions of paragraph (a)(2)(i) of this section shall count as an entering student a first-time freshman student who is enrolled as of October 15, or the end of the institution's drop-add period.

(ii) An institution covered by the provisions of paragraph (a)(2)(ii) of this section shall count as an entering student a first-time freshman student who has attended at least one day of class.

(5)(i) Beginning with the group of students who enter the institution between July 1, 1996 and June 30, 1997, an institution shall disclose its completion or graduation rate and transfer-out rate information no later than the January 1 immediately following the point in time that 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and transfer-out rate calculations.

(ii) An institution shall disclose no later than January 1 each year thereafter its completion or graduation rate information for each succeeding group of students who completed or graduated within 150% of the normal time for completion or graduation from their programs as of June 30 of the preceding year.

(b) In calculating the completion or graduation rate under paragraph (a) of this section, an institution shall count as completed or graduated--

(1) Students who have completed or graduated within 150% of the normal time for completion or graduation from their program;

(2) Students who have completed a transfer program as described in Sec. 668.8(b)(1)(ii) within 150% of normal time for completion from that program may be counted as completers.

(c)(1) In calculating the transfer-out rate under section paragraph (a) of this section, an institution shall count as students who have transferred out those students who, within 150% of the normal time for completion or graduation from the program in which the student was enrolled, subsequently enroll in any program of an eligible institution for which the prior program provides substantial preparation;

(2) An institution shall document that its program provided substantial preparation to a student by obtaining a copy of any of the following:

(i) Certification letter from the receiving institution stating that a student is enrolled in that institution;

(ii) Electronic certification from the receiving institution stating that a student is enrolled in that institution;

(iii) Confirmation of enrollment data from a legally-authorized statewide or regional tracking system (or shared information from those systems) confirming that a student has enrolled in another institution;

(iv) Institutional data exchange information confirming that a student as enrolled in another institution; or

(v) An equivalent level of documentation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude from the calculation of its completion or graduation rate and its transfer-out rate students who--

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps; or

(4) Are deceased, or totally and permanently disabled.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of Secs. 668.41(a)(3) and 668.41(b) of this subpart.

(3) An institution, or athletic association or conference applying on behalf of an institution that seeks a waiver under paragraph (e)(1) of this section shall submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(Authority: 20 U.S.C. 1092)

(Approved by the Office of Management and Budget under control number 1840-0719)

Note: Section added December 1, 1995, effective July 1, 1996. OMB control number added June 13, 1996, effective July 1, 1996.

668.47 Institutional security policies and crime statistics.

(a) An institution shall, by September 1, 1992, and by September 1 of each year thereafter, publish and distribute, through appropriate publications and mailings, an annual security report that contains, at a minimum, the following information:

(1) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to those reports, including policies for making timely reports to members of the campus community regarding the occurrence of crimes described in paragraph (a)(6) of this section. This statement shall include a list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (a)(6) for the purpose of making timely reports.

(2) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(3) A statement of current policies concerning campus law enforcement, including--

(i) The enforcement authority of security personnel, including their working relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals; and

(ii) Policies that encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(4) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(5) A description of programs designed to inform students and employees about the prevention of crimes.

(6)(i) Statistics concerning the occurrence on campus of the following criminal offenses reported to local police agencies or to any official of the institution who has significant responsibility for student and campus activities:

(A) Murder.

(B) Rape (prior to August 1, 1992) or sex offenses, forcible or nonforcible (on or after August 1, 1992).

(C) Robbery.

(D) Aggravated assault.

(E) Burglary.

(F) Motor-vehicle theft; and

(ii) Statistics concerning the criminal offenses of murder, forcible rape, and aggravated assault, as listed in paragraph (a)(6)(i) of this section, that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, as prescribed by the Hate Crimes Statistics Act (28 U.S.C. 534).

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations recognized by the institution, including student organizations with off-campus housing facilities.

(8) Statistics concerning the number of arrests for the following crimes occurring on campus:

(i) Liquor-law violations.

(ii) Drug-abuse violations.

(iii) Weapons possessions.

(9) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(10) A statement of policy regarding the possession, use and sale of illegal drugs and enforcement of Federal and State drug laws.

(11) A description of any drug or alcohol-abuse education programs, as required under section 1213 of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 1213 of the HEA.

(12) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include--

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify proper law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that--

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. Compliance with this subsection does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(b) An institution shall distribute the security report required by paragraph (a) of this section annually to all--

(1) Current students and employees by appropriate publications and mailings, through--

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or computer network; or

(ii) Publications provided directly to each individual; and

(2) Prospective students as defined in Sec. 668.41(b) and prospective employees as defined in paragraph (f) of this section, upon request, provided that such individuals are informed of the availability of the security report, given a summary of its contents, and given the opportunity to request a copy.

(c) An institution shall comply separately with the requirements of this section for each campus. A branch, school, or administrative division within an institution that is not within a reasonably contiguous geographic area with the institution's main campus is considered to be a separate campus.

(d)(1)(i) An institution's first annual security report (due September 1, 1992) must contain the statistics described in paragraph (a)(6) of this section covering the period January 1, 1991, through December 31, 1991, and the two preceding calendar years, or the portion thereof for which data are reasonably available. The first annual security report must contain those statistics covering at least the period from August 1, 1991, through July 31, 1992.

(ii) An institution's second and third annual security reports (due September 1, 1993 and September 1, 1994, respectively) must contain the statistics described in paragraph (a)(6) of this section covering the most recent calendar year and the two preceding calendar years, or the portion thereof for which data are reasonably available. The second annual security report must contain those statistics covering at least the period from August 1, 1991, through December 31, 1991, and calendar year 1992. The third annual security report must contain those statistics covering at least the period from August 1, 1991, through December 31, 1991, and calendar years 1992 and 1993.

(iii) An institution's annual security report due September 1, 1995, and each subsequent report, must contain the statistics described in paragraph (a)(6) of this section covering the three calendar years preceding the year in which the report is disclosed.

(iv) In each annual security report due on or after September 1, 1993, September 1, 1994, September 1, 1995, an institution must, in accordance with paragraphs (d)(1) (ii) and (iii) of this section, report statistics covering rape for periods of time prior to August 1, 1992, and statistics concerning sex offenses, forcible or nonforcible, for periods of time on or after August 1, 1992.

(v) In all subsequent annual security reports, an institution shall report statistics for sex offenses, forcible and nonforcible.

(2)(i) An institution's first annual security report (due September 1, 1992) must contain the statistics described in paragraph (a)(8) of this section covering the period January 1, 1991, through December 31, 1991, or the portion thereof for which those statistics are available. The first annual security report must contain that data covering at least the period August 1, 1991, through December 31, 1991.

(ii) An institution's second annual security report (due September 1, 1993) and each subsequent report must contain the statistics described in paragraph (a)(8) of this section, covering the calendar year preceding the year during which the report is to be disclosed.

(3) An institution shall compile crime statistics required under paragraph (a) (6) and (8) of this section in accordance with the definitions used in the Federal Bureau of Investigation's Uniform Crime Reporting Program as provided in Appendix E to this part.

(4) Upon the request of the Secretary, an institution must submit to the Secretary the statistics required by paragraphs (a)(6) and (a)(8) of this section.

(e) An institution shall, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are--

(1) Described in paragraph (a)(6) of this section;

(2) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (a)(1) of this section or local police agencies; and

(3) Considered by the institution to represent a threat to students and employees.

(f) The following definitions apply to this section:

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes.

(2) Any building or property owned or controlled by a student organization recognized by the institution.

(3) Any building or property controlled by the institution, but owned by a third-party.

Campus security authority: (1) A campus law enforcement unit.

(2) An individual or organization specified in an institution's statement of campus security policy as the individual or organization to whom students and employees should report criminal offenses.

(3) An official of an institution who has significant responsibility for student and campus activities, but does not have significant counseling responsibilities.

Prospective employee: An individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning employment with the institution.

(Authority: 20 U.S.C. 534, 1092, and 1232g)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section added April 29, 1994, effective July 1, 1994. (a)(6)(i), (a)(8), (b)(1) introductory text, and (b)(1)(i) amended June 30, 1995, effective July 31, 1995.

Sec. 668.48 Report on athletic program participation rates and financial support data.

(a) Applicability. This section applies to each co-educational institution of higher education that--

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) Definitions. The following definitions apply for purposes of this section only.

(1) Athletically-related student aid means any scholarship, grant, or other form of financial assistance, the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution of higher education in order to be eligible to receive that assistance.

(2) Institutional salary means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3) Recruiting expenses means all expenses institutions incur for recruiting activities, including but not limited to expenditures for transportation, lodging, and meals for both recruits and institutional personnel engaged in recruiting, all expenditures for on-site visits, and all other expenses related to recruiting.

(4) Reporting year means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) Undergraduate students means students who are consistently designated as such by the institution.

(6) Varsity team means a team that--

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined as varsity teams.

(c) Report. An institution subject to this section shall annually, for the immediately preceding reporting year, prepare a report that contains the following information regarding intercollegiate athletics:

(1) The number of male and female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants, by team, as of the day of the first scheduled contest of the reporting year for the team.

(ii) Total operating expenses attributable to those teams. For the purposes of this section, the term "operating expenses" means expenditures on lodging and meals, transportation, officials, uniforms and equipment. An institution--

(A) Also may report those expenses on a per capita basis for each team; and

(B) May report combined expenditures attributable to closely-related teams--such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

(iii)(A) Whether the head coach was male or female and whether the head coach was assigned to that team on a full-time or part-time basis.

(B) The institution shall consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(iv)(A) The number of assistant coaches who were male and the number of assistant coaches who were female for each team and whether a particular coach was assigned to that team on a full-time or part-time basis.

(B) The institution shall consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The total amount of money spent on athletically-related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(4) The ratio of-(i) Athletically-related student aid awarded male athletes; and

(ii) Athletically-related student aid awarded female athletes.

(5) The total amount of expenditures on recruiting aggregately for all men's teams, and aggregately for all women's teams.

(6) The total annual revenues generated across all men's teams, and the total annual revenues generated across all women's teams. An institution may also report those revenues by individual team.

(7)(i) The average annual institutional salary of the head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the head coaches of all women's teams, across all offered sports.

(ii) If a head coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution shall divide the salary by the number of teams for which the coach had responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(8) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

Note to paragraph (e): The Secretary interprets the statute to require an institution to count all varsity team members as participants, and not merely those athletes who take part in a scheduled contest. "Participants" include all students who practice with the varsity team and receive coaching as of the day of the first scheduled intercollegiate contest of the designated reporting year, including junior varsity team and freshman team players if they are part of the overall varsity program. The Secretary believes that a reasonable count of participants would also cover all students who receive athletically-related student aid, including redshirts, injured student athletes, and fifth-year team members who have already received a bachelor's degree.

(Authority: 20 U.S.C. 1092(g)(1), (2) and (4))

(Approved by the Office of Management and Budget under control number 1840-0711)

Note: Section added November 29, 1995, effective July 1, 1996. OMB control number added June 13, 1996, effective July 1, 1996.

Sec. 668.49 Report on completion or graduation rates for student-athletes.

(a)(1) By July 1, 1997, and by every July 1 every year thereafter, each institution that is attended by students receiving athletically-related student aid shall produce an annual report containing the following information:

(i) The number of students, categorized by race and gender, who attended that institution during the year prior to the submission of the report.

(ii) The number of students described in paragraph (a)(1)(i) of this section who received athletically-related student aid, categorized by race and gender within each sport.

(iii) The completion or graduation rate and transfer-out rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in Sec. 668.46(a) (1), (2), (3) and (4).

(iv) The completion or graduation rate and transfer-out rate of the entering students described in Sec. 668.46(a) (1), (2), (3)and (4) who received athletically-related student aid, categorized by race and gender within each sport.

(v) The average completion or graduation rate and transfer-out rate for the four most recent completing or graduating classes of entering students described in Sec. 668.46(a) (2), (3), and (4) categorized by race and gender. If an institution has completion or graduation rates and transfer-out rates for fewer than four of those classes, it shall disclose the average rate of those classes for which it has rates.

(2) For purposes of this section, sport means--

(i) Basketball;

(ii) Football;

(iii) Baseball;

(iv) Cross-country and track combined; and

(v) All other sports combined.

(3) If a category of students identified in paragraph (a)(1)(iv) above contains five or fewer students, the institution need not disclose information on that category of students.

(b) The provisions of Sec. 668.46 (a), (b) and (c) apply for purposes of calculating the completion or graduation rates and transfer-out rates required under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(c) Each institution of higher education described in paragraph (a) of this section may also provide to students and the Secretary supplemental information containing--

(1) The graduation or completion rate of the students who transferred into the institution; and

(2) The number of students who transferred out of the institution.

(d) Section 668.46(d) applies for purposes of this section.

(Authority: 20 U.S.C. 1092)

(Approved by the Office of Management and Budget under control number 1840-0719)

Note: Section added December 1, 1995, effective July 1, 1996. OMB control number added June 13, 1996, effective July 1, 1996.

Subpart E--Verification of Student Aid Application Information

Sec. 668.51 General.

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Federal Pell Grant, campus-based, Federal Stafford Loan, and FDSL programs.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant shall provide the specified documents or information.

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the Federal Stafford Loan Program that are not located in a State.

(Authority: 20 U.S.C. 1094)

Note: Section amended December 2, 1991, effective beginning with 1992-93 award year. (c) removed, (d) redesignated as (c), (a) and (c) amended April 28, 1994, effective July 1, 1994.

Sec. 668.52 Definitions.

The following definitions apply to this subpart:

Base year means the calendar year preceding the first calendar year of an award year.

Edits means a set of pre-established factors for identifying--

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

Expected family contribution (EFC) means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

Institutional student information report as defined in 34 CFR 690.2 for purposes of the Federal Pell Grant, campus-based, Federal Stafford Loan, and William D. Ford Federal Direct Loan programs.

Student aid application means an application approved by the Secretary and submitted by a person to have his or her EFC determined under the Federal Pell Grant, campus-based, Federal Stafford Loan, or FDSL programs.

(Authority: 20 U.S.C. 1094)

Note: *Need analysis servicer* deleted, *Institutional student information report* added, and *Student aid application* amended April 28, 1994, effective July 1, 1994. *Institutional student information report* amended November 29, 1994, effective July 1, 1995.

Sec. 668.53 Policies and procedures.

(a) An institution shall establish and use written policies and procedures for verifying information contained in a student aid application in accordance with the provisions of this subpart. These policies and procedures must include--

(1) The time period within which an applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of verification if, as a result of verification, the applicant's EFC changes and results in a change in the applicant's award or loan;

(4) The procedures the institution requires an applicant to follow to correct application information determined to be in error; and

(5) The procedures for making referrals under Sec. 668.16.

(b) The institution's procedures must provide that it shall furnish, in a timely manner, to each applicant selected for verification a clear explanation of--

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under Control Number 1840-0570)

Note: Section amended December 21, 1991, effective beginning with 1992-93 award year. (a)(3) and (a)(5) amended November 29, 1994, effective July 1, 1995.

Sec. 668.54 Selection of applications for verification.

(a) *General requirements.* (1) Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph.

(2)(i) An institution shall require each applicant whose application is selected for verification on the basis of edits specified by the Secretary, to verify all of the applicable items specified in Sec. 668.56, except that no institution is required to verify the applications of more than 30 percent of its total number of applicants for assistance under the Federal Pell Grant, Federal Direct Student Loan, campus-based, and Federal Stafford Loan programs in an award year.

(ii) An institution may only include those applicants selected for verification by the Secretary in its calculation of 30 percent of total applicants.

(3) If an institution has reason to believe that any information on an application used to calculate an EFC is inaccurate, it shall require the applicant to verify the information that it has reason to believe is inaccurate.

(4) If an applicant is selected to verify the information on his or her application under paragraph (a)(2) of this section, the institution shall require the applicant to verify the information as specified in Sec. 668.56 on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for the applicable award year.

(5) An institution or the Secretary may require an applicant to verify any data elements that the institution or the Secretary specifies.

(b) *Exclusions from verification.* (1) An institution need not verify an application submitted for an award year if the applicant dies during the award year.

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(2) Unless the institution has reason to believe that the information reported by the applicant is incorrect, it need not verify applications of the following applicants:

(i) An applicant who is--

(A) A legal resident of and, in the case of a dependent student, whose parents are also legal residents of, the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or

(B) A citizen of and, in the case of a dependent student, whose parents are also citizens of, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student, whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant whose parents' address is unknown and cannot be obtained by the applicant.

(vi) An applicant who is a dependent student, both of whose parents are deceased or are physically or mentally incapacitated.

(vii) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(viii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains a letter from the previous institution stating that it has verified the applicant's information, the transaction number of the verified application, and, if relevant, the provision used in Sec. 668.59 for not recalculating the applicant's EFC.

(3) An institution need not require an applicant to document a spouse's information or provide a spouse's signature if--

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(Authority: 20 U.S.C. 1091, 1094)

(Approved by the Office of Management and Budget under Control Number 1840-0570)

Note: Section amended December 2, 1991, effective beginning 1992-93 award year. (a)(3) removed and (a)(4) through (a)(6) redesignated as (a)(3) through (a)(5), respectively. April 28, 1994, effective July 1, 1994. (b)(2)(vi) and (b)(2)(vii) redesignated as (b)(2)(vii) and (b)(2(viii), a new (b)(2)(vi) added, and (a)(2), (b)(2)(v), and redesignated (b)(2)(viii) amended November 29, 1994, effective July 1, 1995.

Sec. 668.55 Updating information.

(a)(1) Unless the provisions of paragraph (a)(2) or (a)(3) of this section apply, an applicant is required to update--

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if--

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(3) If, as a result of a change in the applicant's marital status, the number of family members in the applicant's household, the number of those household members attending postsecondary education institutions, or the applicant's dependency status changes, the applicant shall not update those factors or that status.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status, an applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information.

(c) If an applicant has received Federal Pell Grant, campus-based, Federal Stafford Loan, or FDSL program assistance for an award year, and the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending postsecondary educational institutions on the subsequent application, the institution--

(1) Is required to take that newly updated information into account when awarding for that award year further Federal Pell Grant, campus-based, or FDSL program assistance or certifying a Federal Stafford Loan application; and

(2) Is not required to adjust the Federal Pell Grant, campus-based, or FDSL program assistance previously awarded to the applicant for that award year, or any previously certified Federal Stafford Loan or William D. Ford Federal Direct Loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d)(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant must file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

(2) If the institution has previously certified a Federal Stafford Loan application for an applicant, the applicant shall not update his or her dependency status on the Federal Stafford Loan application.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under Control Number 1840-0570)

Note: Section amended December 2, 1991, effective beginning 1992-93 award year. (c) amended April 28, 1994, effective July 1, 1994. (b) amended November 29, 1994, effective July 1, 1995.

Sec. 668.56 Items to be verified.

(a) Except, as provided in paragraphs (b), (c), (d), and (e) of this section, an institution shall require an applicant selected for verification under Sec. 668.54(a)(2) or (3) to submit acceptable documentation described in Sec. 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year if base year data was used in determining eligibility, or income earned from work, for a non-tax filer.

(2) U.S. income tax paid for the base year if base year data was used in determining eligibility.

(3)(i) For an applicant who is a dependent student, the aggregate number of family members in the household or households of the applicant's parents if--

(A) The applicant's parent is single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(B) The applicant's parents are married to each other and not separated and the aggregate number of family members is greater than three.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant if--

(A) The applicant is single, divorced, separated, or widowed and the number of family members is greater than one; or

(B) The applicant is married and not separated and the number of family members is greater than two.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The following untaxed income and benefits for the base year if base year data was used in determining eligibility--

(i) Social Security benefits if the institution has reason to believe that those benefits were received and were not reported or were incorrectly reported;

(ii) Child support if the institution has reason to believe that child support was received;

(iii) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account;

(iv) Interest on tax-free bond;

(v) Foreign income excluded from U.S. income taxation if the institution has reason to believe that foreign income was received;

(vi) The earned income credit taken on the applicant's tax return; and

(vii) All other untaxed income subject to U.S. income tax reporting requirements in the base year which is included on the tax return form, excluding information contained on schedules appended to such forms.

(b) If an applicant selected for verification submits an SAR or output document to the institution or the institution receives the applicant's ISIR, within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under 668.54(a)(2), the institution need not require the applicant to verify--

(1) The number of family members in the household; or

(2) The number of family members in the household, who are enrolled as at least half-time students in postsecondary educational institutions.

(c) If the number of family members in the household or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(d) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment status from its own records, the institution need not require the applicant to verify that information.

(e) If the application or the applicant's spouse or, in the case of a dependent student, the applicant's parents receive untaxed income or benefits from a Federal, State, or local government agency determining their eligibility for that income or those benefits by means of a financial needs test, the institution need not require the untaxed income and benefits to be verified.

(Authority: 20 U.S.C. 1094, 1095)

(Approved by the Office of Management and Budget under Control Number 1840-0570)

Note: Section amended December 2, 1991, effective beginning 1992-93 award year. (a) and (c) amended August 27, 1992, effective November 7, 1992. (b) introductory text amended April 28, 1994, effective July 1, 1994. (a)(5)(i) amended November 29, 1994, effective July 1, 1995.

Sec. 668.57 Acceptable documentation.

(a) *Adjusted Gross Income (AGI), income earned from work, and U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify AGI and U.S. income tax paid by submitting to it, if relevant--

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2 received by the parent whose income is being taken into account if--

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2 he or she received if the independent student--

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who filed a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of an IRS form which lists tax account information.

(3) An institution shall accept, in lieu of an income tax return or an IRS listing of tax account information of an individual whose income was used in calculating the EFC of an applicant, the documentation set forth in paragraph (a)(4) of this section if the individual for the base year--

(i) Has not filed and is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or a Listing of Tax Account Information, and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide a Listing of Tax Account Information.

(4) An institution shall accept--

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed nor is required to file an income tax return for the base year and certifying for that year that individual's--

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(ii) For an individual described in paragraph (a)(3)(ii) of this section--

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the base year, or a copy of the IRS's approval of an extension beyond the automatic four-month extension if the individual requested an additional extension of the filing time; and

(B) A copy of each IRS Form W-2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iii) For an individual described in paragraph (a)(3)(iii) of this section--

(A) A copy of each IRS Form W-2 that the individual received for the base year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U.S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed income tax return when filed. When an institution receives the copy of the return, it may re-verify the adjusted gross income and taxes paid by the applicant and his or her spouse or parents.

(6) If an individual who is required to submit an IRS Form W-2 under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work, the source of that income, and the reason that the IRS Form W-2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and one of the applicant's parents if the applicant is a dependent student, or the applicant if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in postsecondary institutions.* (1) Except as provided in Sec. 668.56(b), (c), (d), and (e), an institution shall require an applicant selected for verification to verify annually information included on the application regarding the number of household members in the applicant's family enrolled on at least a half-time basis in postsecondary institutions. The institution shall require the applicant to verify the information by submitting a statement signed by the applicant and one of the applicant's parents, if the applicant is a dependent student, or by the applicant if the applicant is an independent student, listing--

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of the institution attended by each student.

(2) If the institution has reason to believe that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require--

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend or the institution has information itself that the student will be attending the same school as the applicant.

(d) *Untaxed income and benefits.* An institution shall require an applicant selected for verification to verify--

(1) Untaxed income and benefits described in Sec. 668.56(a)(5)(iii), (iv), (v), (vi), and (vii) by submitting to it--

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or is required to be filed, a statement signed by the relevant individuals certifying that no tax return was filed or is required to be filed and providing the sources and amount of untaxed income and benefits specified in Sec. 668.56(a)(5)(iii), (iv), (v), and (vi);

(2) Social Security benefits if the institution has reason to believe that those benefits were received and were not reported, or that the applicant has incorrectly reported Social Security benefits received by the applicant, the applicant's parents, or any other children of the applicant's parents who are members of the applicant's household, in the case of a dependent student, or by the applicant, the applicant's spouse, or the applicant's children in the case of an independent student. The applicant shall verify Social Security benefits by submitting a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year for the appropriate individuals listed above or, at the institution's option, a statement signed by both the applicant and the applicant's parent, in the case of a dependent student, or by the applicant, in the case of an independent student, certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it--

(i) A statement signed by the applicant and one of the applicant's parents in the case of a dependent student, or by the applicant in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution has reason to believe that the information provided is inaccurate, the applicant must verify the amount of child support received by providing a document such as--

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under Control Number 1840-0570)

Note: Section amended December 2, 1991, effective beginning 1992-93 award year. (c)(1) and (d)(1) amended August 17, 1992, effective November 7, 1991. (a)(2) amended April 28, 1994, effective July 1, 1994. (a)(3) introductory text, (c)(1) introductory text, and (d)(2) amended November 29, 1994, effective July 1, 1995. (b), (c)(1) introductory text, and (d)(3)(i) amended June 30, 1995, effective July 31, 1995.

Sec. 668.58 Interim disbursements.

(a)(1) If an institution has reason to believe that the information included on the application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the institution may not--

(i) Disburse any Federal Pell Grant, campus-based, or need-based ICL program funds to the applicant;

(ii) Employ the applicant in its Federal Work-Study Program; or

(iii) Certify the applicant's Federal Stafford Loan application or process Federal Stafford Loan proceeds for any previously certified Federal Stafford Loan application.

(2) If an institution does not have reason to believe that the information included on an application is inaccurate prior to verification, the institution--

(i) May withhold payment of Federal Pell Grant and campus-based funds; or

(ii)(A) May make one disbursement of any combination of Federal Pell Grant, Federal Perkins Loan, FDSL, or FSEOG funds for the applicant's first payment period; and

(B) May employ or allow an employer to employ an eligible student under the Federal Work-Study Program for the first 60 consecutive days after the student's enrollment in that award year; and

(iii)(A) May withhold certification of the applicant's Federal Stafford Loan or William D. Ford Federal Direct Loan application; or

(B) May certify the Federal Stafford Loan or William D. Ford Federal Direct Loan application provided that the institution does not process Federal Stafford Loan or William D. Ford Federal Direct Loan proceeds.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii)(A) or (B) of this section, it is liable for any overpayment discovered as a result of the verification process to the extent that the overpayment is not recovered from the student.

(c) An institution may not withhold any Federal Stafford Loan or William D. Ford Federal Direct Loan proceeds from a student under paragraph (a)(2) of this section for more than 45 days. If the applicant does not complete the verification process within the 45 day period, the institution shall return the proceeds to the lender.

(d)(1) If the institution receives Federal Stafford Loan or William D. Ford Federal Direct Loan proceeds in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated by reducing subsequent disbursements for the applicable loan period, the institution shall process the proceeds and advise the lender to reduce the subsequent disbursements.

(2) If the institution receives Federal Stafford Loan or William D. Ford Federal Direct Loan proceeds in an amount which exceed the student's need for the loan based upon the verified information and the excess funds cannot be eliminated in subsequent disbursements for the applicable loan period, the institution shall return the excess proceeds to the lender.

(Authority: 20 U.S.C. 1094)

Note: Section amended December 2, 1991, effective beginning 1992-93 award year. (a)(1)(i) amended August 27, 1992, effective November 7, 1992. (a)(1)(ii), (a)(2)(i), (a)(2)(ii), and (a)(2)(ii)(B) amended April 28, 1994, effective July 1, 1994.

Sec. 668.59 Consequences of a change in application information.

(a) For the Federal Pell Grant Program–

(1) Except as provided in paragraph (a)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her application information to the Secretary for corrections if–

(i) The institution recalculates the applicant's EFC, determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Federal Pell Grant award; or

(ii) The institution does not recalculate the applicant's EFC.

(2) An institution need not require an applicant to resubmit his or her application information to the Secretary, recalculate an applicant's EFC, or adjust an applicant's Federal Pell Grant award if, as a result of the verification process, the institution finds–

(i) No errors in nondollar items used to calculate the applicant's EFC;

(ii) No dollar amount in excess of $400 as calculated by the net difference between the corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu of Adjusted Gross Income (AGI).

(b) For the Federal Pell Grant Program–

(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraph (a)(2) of this section, the institution shall calculate and disburse the applicant's Pell Grant award on the basis of the applicant's original EFC.

(2)(i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process, the institution shall–

(A) Require the applicant to resubmit his or her application to the Secretary;

(B) Recalculate the applicant's Federal Pell Grant award on the basis of the EFC on the corrected SAR or ISIR; and

(C) Disburse any additional funds under that award only if the applicant provides the institution with the corrected SAR or ISIR and only to the extent that additional funds are payable based on the recalculation.

(ii) If an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant's award, the institution–

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(A) May disburse the applicant's Federal Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her application information to the Secretary; and

(B) Except as provided in 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the institution receives the corrected SAR or ISIR.

(c) For the campus-based and Federal Stafford Loan or William D. Ford Federal Direct Loan programs--

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall--

(i) Recalculate the applicant's EFC; and

(ii) Adjust the applicant's financial aid package for the campus-based and Federal Stafford Loan or William D. Ford Federal Direct Loan programs to reflect the new EFC if the new EFC results in an overaward of campus-based funds or decreases the applicant's recommended loan amount.

(2) An institution need not recalculate an applicant's EFC or adjust his or her aid package if, as a result of the verification process, the institution finds--

(i) No errors in nondollar items used to calculate the applicant's EFC;

(ii) No dollar amount in excess of $400 as calculated by the net difference between the corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu of Adjusted Gross Income (AGI).

(d)(1) If the institution selects an applicant for verification for an award year who previously received a loan under the William D. Ford Federal Direct Loan Program for that award year, and as a result of verification the loan amount is reduced, the institution shall comply with the procedures for notifying the borrower and lender specified in Sec. 668.61(a).

(2) If the institution selects an applicant for verification for an award year who previously received a loan under the Federal Stafford Loan Program for that award year, and as a result of verification the loan amount is reduced, the institution shall comply with the procedures for notifying the borrower and lender specified in Sec. 668.61(b) and Sec. 682.604(h).

(e) If the applicant has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot do so, the institution shall forward the applicant's name, social security number, and other relevant information to the Secretary.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under Control Number 1840-0570)

Note: Section amended December 2, 1991, effective with 1992-93 award year. (a) introductory text, (a)(1)(i), (b)(2)(i)(B), (b)(2)(i)(C), (b)(2)(ii)(A), (b)(2)(ii)(B), and (c) introductory text amended April 28, 1994, effective July 1, 1994. (a)(2) removed, (a)(3) redesignated as (a)(2), and (a)(1) introductory text, redesignated (a)(2), (b)(1), (c)(2)(i), (c)(2)(ii), and (d) amended November 29, 1994, effective July 1, 1995. (a)(2)(ii) and (c)(2)(ii) amended June 30, 1995, effective July 31, 1995.

Sec. 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in Sec. 668.57 that are requested by the institution or the Secretary.

(b) For purposes of the campus-based, Federal Stafford Loan and FDSL programs--

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution or by the Secretary--

(i) The institution may not--

(A) Disburse any additional Federal Perkins Loan, FDSL, or FSEOG funds to the applicant;

(B) Continue to employ or allow an employer to employ the applicant under CWS;

(C) Certify the applicant's Federal Stafford Loan or William D. Ford Federal Direct Loan applications; or

(D) Process Federal Stafford Loan or William D. Ford Federal Direct Loan proceeds for the applicant;

(ii) The institution shall return to the lender any Federal Stafford Loan or William D. Ford Federal Direct Loan proceeds that otherwise would be payable to the applicant; and

(iii) The applicant shall repay to the institution any Federal Perkins Loan, FDSL, or FSEOG payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding paragraph (b)(1)(i) of this section; and

(3) An institution may not withhold any Federal Stafford Loan proceeds from an applicant under paragraph (b)(1)(i)(D) of this section for more than 45 days. If the applicant does not complete verification within the 45-day period, the institution shall return the Federal Stafford Loan proceeds to the lender.

(c) For purposes of the Federal Pell Grant Program--

(1) An applicant may submit a verified SAR to the institution or the institution may receive a verified ISIR after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the Federal Register. If the institution receives a verified SAR or ISIR during the established additional time period, and the EFC on the two SARs or ISIRs are different, payment must be based on the higher of the two EFCs.

(2) If the applicant does not provide to the institution the requested documentation and, if necessary, a verified SAR or the institution does not receive a verified ISIR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant--

(i) Forfeits the Federal Pell Grant for the award year; and

(ii) Shall return any Federal Pell Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent application for Federal Pell Grant, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, FDSL, or Federal Stafford Loan program assistance of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing the verification process without completing that process, and the deadline is in the subsequent award year, the institution may not--

(1) Make any further disbursements on behalf of the applicant;

(2) Certify that applicant's Federal Stafford Loan application or process that applicant's Federal Stafford Loan proceeds; or

(3) Consider any funds it disbursed to that applicant under Sec. 668.58 (a)(2) as an overpayment.

(Authority: 20 U.S.C. 1094)

Note: Section amended December 2, 1992, effective with 1992-93 award year. (b) introductory text, (b)(1)(i)(A), (b)(1)(iii), (c)(1) introductory text, and (d) amended April 28, 1994, effective July 1, 1994. (c)(2) introductory text amended November 29, 1994, effective July 1, 1995.

Sec. 668.61 Recovery of funds.

(a) If an institution discovers, as a result of the verification process, that an applicant received under Sec. 668.58 (a)(2)(ii)(A) more financial aid than the applicant was eligible to receive, the institution shall eliminate the overpayment by--

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by--

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant does not return the overpayment:

(A) Sixty days after the applicant's last day of attendance.

(B) The last day of the award year in which the institution disbursed Federal Pell Grant, Federal Perkins Loan, FDSL, or FSEOG funds to the applicant.

(b) If the institution determines as a result of the verification process that an applicant received Federal Stafford Loan or William D. Ford Federal Direct Loan proceeds for an award year in excess of the student's financial need for the loan, the institution shall withhold and promptly return to the lender or escrow agent any disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid received by the student. However, instead of returning the entire undelivered disbursement, the school may choose to return promptly to the lender only the portion of the disbursement for which the student is ineligible. In either case, the institution shall provide the lender with a written statement describing the reason for the returned loan funds.

(Authority: 20 U.S.C. 1094)

Note: Section amended December 2, 1991, effective with 1992-93 award year. (b) amended August 27, 1992, effective November 8, 1992. (a)(2)(ii)(B) amended April 28, 1994, effective July 1, 1994.

Subpart F--Misrepresentation

Sec. 668.71 Scope and special definitions.

(a) This subpart establishes the standards and rules by which the Secretary may initiate a proceeding under Subpart G against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

(b) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary. Misrepresentation includes the dissemination of endorsements and testimonials that are given under duress.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: 20 U.S.C. 1094)

Sec. 668.72 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous or misleading statements concerning--

(a) The particular type(s), specific source(s), nature and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for--

(1) Acceptance into a labor union or similar organization; or

(2) Receipt of a local, State, or Federal license or a non-governmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended by--

(1) Vocational counselors, high schools or employment agencies; or

(2) Governmental officials for governmental employment;

(e) Its size, location, facilities or equipment;

(f) The availability, frequency and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(k) The nature of extent of any prerequisites established for enrollment in any course; or

(l) Any matters required to be disclosed to prospective students under 668.44 and 668.47 of this part.

(Authority: 20 U.S.C. 1094)

Note: (l) amended April 29, 1994, effective July 1, 1994.

Sec. 668.73 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous or misleading statements concerning--

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(Authority: 20 U.S.C. 1094)

Sec. 668.74 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous or misleading statements--

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment.

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates.

(Authority: 20 U.S.C. 1094)

Sec. 668.75 Procedures.

(a) On receipt of a written allegation or complaint from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in Sec. 668.81 reviews the allegation or complaint to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official--

(1) Initiates action to fine or to limit, suspend or terminate the institution's eligibility to participate in the Title IV, HEA programs according to the procedures set forth in Subpart G, or

(2) Take other appropriate action.

(Authority: 20 U.S.C. 1094)

Subpart G--Fine, Limitation, Suspension and Termination Proceedings

Sec. 668.81 Scope and special definitions.

(a) This subpart establishes regulations for the following actions with respect to a participating institution or third-party servicer:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(b) This subpart applies to an institution or a third-party servicer that violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(c) This subpart does not apply to a determination that--

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location, or educational program because the institution, location, or educational program fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the Title IV, HEA program for which a designation of eligibility is sought;

(2) An institution fails to qualify for initial certification or provisional certification to participate in any Title IV, HEA program because the institution does not meet the factors of

financial responsibility and standards of administrative capability contained in subpart B of this part;

(3) A participating institution's or a provisionally certified participating institution's period of participation, as specified under Sec. 668.13, has expired; or

(4) A participating institution's provisional certification is revoked under the procedures in Sec. 668.13.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to a participating institution (i.e., advance payments and payments by way of reimbursements).

(e) This subpart does not apply to the termination of the eligibility of an institution to participate in the Title IV, HEA programs if that termination results from the Secretary's receipt of a notice from a State postsecondary review entity under 34 CFR part 667 that indicates the SPRE has determined that the institution should not be eligible to participate in those programs.

(Authority: 20 U.S.C. 1094 and 1099a-3(h))

Note: (a)(1) introductory text and (a)(1)(i) through (a)(1)(iii) redesignated as (a) introductory text and (a)(1) through (a)(3), respectively, (a)(4) added, (a) introductory text, (b), (c), and (d) amended, and (f) removed April 29, 1994, effective July 1, 1994. (e) and authority citation amended November 29, 1994, effective July 1, 1995.

Sec. 668.82 Standard of conduct.

(a) A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

(b) In the capacity of a fiduciary--

(1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and

(2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.

(c) The failure of a participating institution or any of the institution's third-party servicers to administer a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for--

(1) An emergency action against the institution, a fine on the institution, or the limitation, suspension, or termination of the institution's participation in that program; or

(2) An emergency action against the servicer, a fine on the servicer, or the limitation, suspension, or termination of the servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in that program.

(d)(1) A participating institution or a third-party servicer with which the institution contracts violates its fiduciary duty if--

(i)(A) The servicer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) A person who exercises substantial control over the servicer, as determined according to 668.15, has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(C) The servicer employs a person in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or who has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(D) The servicer uses or contracts in a capacity that involves any aspect of the administration of the Title IV, HEA programs with any other person, agency, or organization that has been or whose officers or employees have been--

(*1*) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(2) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1)(i) of this section, the institution or servicer, as applicable, does not promptly remove the person, agency, or organization from any involvement in the administration of the institution's participation in Title IV, HEA programs, or, as applicable, the removal or elimination of any substantial control, as determined according to 668.15, over the servicer.

(2) A violation for a reason contained in paragraph (d)(1) of this section is grounds for terminating--

(i) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program; and

(ii) The participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution had been aware of the violation and had failed to take the appropriate action described in paragraph (d)(1)(ii) of this section.

(e)(1) A participating institution or third-party servicer, as applicable, violates its fiduciary duty if--

(i)(A) The institution or servicer, as applicable, is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p.189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Cause exists under 34 CFR 85.305 or 85.405 for debarring or suspending the institution, servicer, or any principal or affiliate of the institution or servicer under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(ii) Upon learning of the debarment, suspension, or cause for debarment or suspension, the institution or servicer, as applicable, does not promptly--

(A) Discontinue the affiliation; or

(B) Remove the principal from responsibility for any aspect of the administration of an institution's or servicer's participation in the Title IV, HEA programs.

(2) A violation for a reason contained in paragraph (e)(1) of this section is grounds for terminating--

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program. The violation is also grounds for terminating, under this subpart, the participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution knew or should have known of the violation.

(f)(1) The debarment of a participating institution or third-party servicer, as applicable, under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, by the Secretary or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557 (formal adjudication requirements under the Administrative Procedure Act), terminates, for the duration of the debarment--

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(2)(i) The suspension of a participating institution or third-party servicer, as applicable, under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, by the Secretary or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557, suspends--

(A) The institution's participation in any Title IV, HEA program; and

(B) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(ii) A suspension under this paragraph lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that the suspension may last longer if--

(A) The institution or servicer, as applicable, and the Secretary, agree to an extension of the suspension; or

(B) The Secretary begins a limitation or termination proceeding against the institution or servicer, as applicable, under this subpart before the 60th day of the suspension.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1070, et seq., 1082(a)(1) and (h)(1), 1094(c)(1)(D) and (H), and 3474)

Note: Section amended April 29, 1994, effective July 1, 1994.

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Sec. 668.83 Emergency action.

(a) Under an emergency action, the Secretary may--

(1) Withhold Title IV, HEA program funds from a participating institution or its students, or from a third-party servicer, as applicable;

(2)(i) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds; or

(ii) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds except in accordance with a particular procedure; and

(3)(i) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program; or

(ii) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program except in accordance with a particular procedure.

(b)(1) An initiating official begins an emergency action against an institution or third-party servicer by sending the institution or servicer a notice by registered mail, return receipt requested. In an emergency action against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution or servicer, as applicable.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action, and that the institution or servicer, as applicable, may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) An initiating official takes emergency action against an institution or third-party servicer only if that official--

(i) Receives information, determined by the official to be reliable, that the institution or servicer, as applicable, is violating any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(ii) Determines that immediate action is necessary to prevent misuse of Title IV, HEA program funds; and

(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate, as applicable--

(A) The participation of the institution in one or more Title IV, HEA programs; or

(B) The eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(2) Examples of violations of a Title IV, HEA program requirement that cause misuse and the likely loss of Title IV, HEA program funds include--

(i) Causing the commitment, disbursement, or delivery by any party of Title IV, HEA program funds in an amount that exceeds--

(A) The amount for which students are eligible; or

(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Federal Stafford, Federal PLUS, or Federal SLS loan if a refund allocable to that loan had been made in the amount and at the time required;

(ii) Using, offering to make available, or causing the use or availability of Title IV, HEA program funds for educational services if--

(A) The institution, servicer, or agents of the institution or servicer have made a substantial misrepresentation as described in Sec. 668.72, 668.73, or 668.74 related to those services;

(B) The institution lacks the administrative or financial ability to provide those services in full; or

(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to compensate by appropriate refund for any portion of an educational program not completed by a student; and

(iii) Engaging in fraud involving the administration of a Title IV, HEA program. Examples of fraud include--

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Secretary;

(C) Falsification, including false certifications, of any document used for or pertaining to–

(*1*) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(*2*) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs or an independent auditor;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(3) If the Secretary begins an emergency action against a third-party servicer, the Secretary may also begin an emergency action against any institution under whose contract a third-party servicer commits the violation.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action becomes effective, an institution or third-party servicer, as applicable, may not–

(i) Make or increase awards or make other commitments of aid to a student under the applicable Title IV, HEA program;

(ii) Disburse either program funds, institutional funds, or other funds as assistance to a student under that Title IV, HEA program;

(iii) In the case of an emergency action pertaining to participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program–

(A) Certify an application for a loan under that program;

(B) Deliver loan proceeds to a student under that program; or

(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect; or

(iv) In the case of an emergency action against a third-party servicer, administer any aspect of any institution's participation in any Title IV, HEA program.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution or servicer to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds, or the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program, except in accordance with a particular procedure specified in the notice of emergency action, the institution or servicer, as applicable, may not take any action described in paragraph (d)(1) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution or servicer, as applicable, the Secretary provides the institution or servicer, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution or servicer may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution or servicer, as applicable, has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because–

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of Title IV, HEA program funds; or

(iii) The institution or servicer, as applicable, will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of

any argument and evidence presented by the institution or servicer, as applicable, and the initiating official.

(6) The show-cause official notifies the institution or servicer, as applicable, of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action. In the case of a notice to a third-party servicer, the official also notifies each institution that contracts with the servicer of that determination. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution or servicer, as applicable, within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in 668.90(c), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, any action affecting the emergency action is at the sole discretion of the initiating official, or, if a show- cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution or servicer, as applicable, may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration of an emergency action, or its modification or revocation by the show-cause official, does not bar subsequent emergency action on a ground other than one specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation of an agreement or limitation imposed or resulting from the prior emergency action.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994. (f)(2) and (g) amended June 30, 1995, effective July 31, 1995.

Sec. 668.84 Fine proceedings.

(a) *Scope and consequences.* (1) The Secretary may impose a fine of up to $25,000 per violation on a participating institution or third-party servicer that--

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of--

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a fine proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution or servicer, as applicable, a notice by certified mail, return receipt requested. In the case of a fine proceeding against a third-party servicer, the official also sends the notice to each institution that is affected by the alleged violations identified as the basis for the fine action, and, to the extent possible, to each institution that contracts with the servicer for the same service affected by the violation. This notice--

(i) Informs the institution or servicer of the Secretary's intent to fine the institution or servicer, as applicable, and the amount of the fine and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the fine, which is at least 20 days from mailing of the notice of intent;

(iii) Informs the institution or servicer that the fine will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a written request for a hearing or written material indicating why the fine should not be imposed; and

(iv) In the case of a fine proceeding against a third-party servicer, informs each institution that is affected by the alleged violations of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution affected by the alleged violations that--

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) A hearing official conducts a hearing in accordance with 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.85 Suspension proceedings.

(a) *Scope and consequences.* (1) The Secretary may suspend an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer--

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of--

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a suspension proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The suspension may not exceed 60 days unless--

(i) The institution or servicer and the Secretary agree to an extension if the institution or servicer, as applicable, has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under Sec. 668.86.

(b) *Procedures.* (1) A designated department official begins a suspension proceeding by sending a notice to an institution or third-party servicer by certified mail, return receipt requested. In the case of a suspension proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. The notice--

(i) Informs the institution or servicer of the intent of the Secretary to suspend the institution's participation or the servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(ii)(A) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent; or

(B) In the case of a suspension action taken due to the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the proposed effective date of the suspension is no more than 30 days after the date of the mailing of the notice of intent.

(iii) Informs the institution or servicer that the suspension will not be effective on the date specified in the notice, except as provided in Sec. 668.90(b)(2), if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the suspension should not take place; and

(iv) In the case of a suspension proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that–

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. In the case of a hearing for an institution subject to suspension action because of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the hearing is set no later than 20 days after the date the designated department official receives the request. The suspension does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with Sec. 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994. (b)(1)(ii) and (b)(3) amended December 1, 1995, effective July 1, 1996.

Sec. 668.86 Limitation or termination proceedings.

(a) *Scope and consequences.* (1) The Secretary may limit or terminate an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer–

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of–

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a limitation or termination proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The consequences of the limitation or termination of the institution's participation or the servicer's eligibility are described in Secs. 668.93 and 668.94, respectively.

(b) *Procedures.* (1) A designated department official begins a limitation or termination proceeding by sending an institution or third-party servicer a notice by certified mail, return receipt requested. In the case of a limitation or termination proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. This notice–

(i) Informs the institution or servicer of the intent of the Secretary to limit or terminate the institution's participation or servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action, and, in the case of a limitation proceeding, states the limits to be imposed;

(ii)(A) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent; or

(B) In the case of a limitation or termination action based on an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the proposed effective date of the termination is no more than 30 days after the date of the mailing of the notice of intent.

(iii) Informs the institution or servicer that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the limitation or termination should not take place; and

(iv) In the case of a limitation or termination proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that--

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and place. The date is at least 15 days after the designated department official receives the request. In the case of a hearing for an institution subject to limitation or termination action because of its FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the hearing is set no later than 20 days after the date the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with Sec. 668.88.

(c) *Expedited proceeding.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994. (b)(1)(ii) and (b)(3) amended December 1, 1995, effective July 1, 1996.

Sec. 668.87 Prehearing conference.

(a) A hearing official may convene a prehearing conference if he or she thinks that the conference would be useful, or if the conference is requested by--

(1) The designated department official who brought a proceeding against an institution or third-party servicer under this subpart; or

(2) The institution or servicer, as applicable.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute.

(c) If the hearing official, the designated department official, and the institution, or servicer, as applicable, agree, a prehearing conference may consist of--

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.88 Hearing.

(a) A hearing is an orderly presentation of arguments and evidence conducted by a hearing official.

(b) If the hearing official, the designated department official who brought a proceeding against an institution or third-party servicer under this subpart, and the institution or servicer, as applicable, agree, the hearing process may be expedited. Procedures to expedite the hearing process may include, but are not limited to, the following--

(1) A restriction on the number or length of submissions;

(2) The conduct of the hearing by telephone conference call;

(3) A stipulation by the parties to facts and legal authorities not in dispute; or

(4) A review limited to the written record.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible.

(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

(4) The hearing official accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(d) The designated department official makes a transcribed record of the proceeding and makes one copy of the record available to the institution or servicer.

(Authority: 20 U.S.C. 1094)

Note: Heading, (a), (b), and (c)(4) amended October 19, 1992, effective December 3, 1992. (b)(3) and (b)(4) amended December 17, 1992, effective January 31, 1993. (b) introductory text and (d) amended April 29, 1994, effective July 1, 1994.

Sec. 668.89 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing.

(b)(1) The hearing official is not authorized to issue subpoenas.

(2) If requested by the hearing official, the parties to a hearing shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following--

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not--

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

Note: Heading, (b)(1), and (c) amended October 19, 1992, effective December 3, 1992. (a), (b)(2), and (c) introductory text amended and (d) added April 29, 1994, effective July 1, 1994.

Sec. 668.90 Initial and final decisions.

(a)(1)(i) A hearing official issues a written initial decision in a hearing by certified mail, return receipt requested to--

(A) The designated department official who began a proceeding against an institution or third-party servicer;

(B) The institution or servicer, as applicable; and

(C) In the case of a proceeding against a third-party servicer, each institution that contracts with the servicer.

(ii) The hearing official may also transmit the notice by other, more expeditious means if practical.

(iii) The hearing official issues the decision within the latest of the following dates:

(A) The 30th day after the last submission is filed with the hearing official.

(B) The 60th day after the last submission is filed with the hearing official if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(C) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

(D) For hearings regarding the limitation, suspension, or termination of an institution based on an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate, the 30th day after the conclusion of the hearing.

(2) The hearing official's initial decision states whether the imposition of the fine, limitation, suspension, or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution or servicer, the hearing official may, if appropriate, issue an initial decision to fine the institution or servicer, as applicable, or, rather than terminating the institution's participation or servicer's eligibility, as applicable, impose one or more limitations on the institution's participation or servicer's eligibility.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section--

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of Sec. 668.14(b)(18), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of Sec. 668.82(d)(1), the hearing official also finds that termination of the institution's participation or servicer's eligibility, as applicable, is warranted;

(iii) If an action brought against an institution or third-party servicer involves its failure to provide surety in the amount specified by the Secretary under 668.15, the hearing official finds that the amount of the surety established by the Secretary was appropriate, unless the institution can demonstrate that the amount was unreasonable;

(iv) In a limitation, suspension, or termination proceeding commenced on the grounds described in Sec. 668.17(a) (2) and (3), if the hearing official finds that an institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or, if applicable, weighted average cohort rate meets the conditions specified in Sec. 668.17(a) (2) and (3) for initiation of limitation, suspension, or termination proceedings, the hearing official also finds that the sanction sought by the designated department official is warranted, except that the hearing official finds that no sanction is warranted if the institution presents clear and convincing evidence demonstrating that the FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate on which the proposed action is based is not the final rate determined by the Department and that the correct rate would result in the institution having an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is beneath the thresholds that make the institution subject to limitation, suspension, or termination action.

(v) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of Sec. 668.23(c)(3), if the hearing official finds that the institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;

(vi) In a termination action against an institution based on the grounds that the institution is not financially responsible under Sec. 668.15(c)(1), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in Sec. 668.15(d)(4) have been met; and

(vii) In a termination action against an institution or third-party servicer on the grounds that the institution or servicer, as applicable, engaged in fraud involving the administration of any Title IV, HEA program, the hearing official finds that the termination action is warranted if the hearing official finds that the institution or servicer, as applicable, engaged in that fraud. Examples of fraud include--

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Department of Education;

(C) Falsification, including false certifications, of any document used for or pertaining to--

(*1*) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(*2*) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, an independent auditor, an eligible institution, or a third-party servicer;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(4) The hearing official bases findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted solely through written submissions, the parties must agree to findings of fact.

(b) (1) In a suspension proceeding, the Secretary reviews the hearing official's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) The Secretary notifies the institution or servicer and, in the case of a suspension proceeding against a third-party servicer, each institution that contracts with the servicer of the final decision. If the Secretary suspends the institution's participation or servicer's eligibility, the suspension takes effect on the later of--

(i) The day that the institution or servicer receives the notice; or

(ii) The date specified in the designated department official's original notice of intent to suspend the institution's participation or servicer's eligibility.

(3) A suspension may not exceed 60 days unless a designated department official begins a limitation or termination proceeding under this subpart before the expiration of that period. In that case, the period may be extended until a final decision is issued in that proceeding according to paragraph (c) of this section.

(c) (1) In a fine, limitation, or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision 30 days after the initial decision is issued and received by both parties unless, within that 30-day period, the institution or servicer, as applicable, or the designated department official appeals the initial decision to the Secretary.

(2) (i) A party may appeal the hearing official's initial decision by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(iii) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after the opposing party receives the appellant's brief or written statement.

(iv) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by--

(A) The evidence introduced into the record at the hearing;

(B) Stipulations of the parties if the hearing consisted of written submissions; or

(C) Matters that may be judicially noticed.

(v) Neither party may introduce new evidence on appeal.

(vi) The initial decision of the hearing official imposing a fine or limiting or terminating the institution's participation or servicer's eligibility does not take effect pending the appeal.

(vii) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (c)(2) (vii) through (ix) of this section.

(viii) In rendering a final decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted only of written submissions and matters that may be judicially noticed.

(ix) If the hearing official finds that a termination is warranted pursuant to paragraph (a)(3) of this section, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

(Authority: 20 U.S.C. 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section amended April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994. (a)(1)(iii)(D) added and (a)(3)(iv) amended December 1, 1995, effective July 1, 1996.

Sec. 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) *Filing of request for hearing, show-cause opportunity, or appeal.*

(1) A request by an institution or third-party servicer for a hearing or show-cause opportunity, other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the designated department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing a document by

facsimile transmission must confirm that a complete and legible copy of the document was received by the Department of Education, and may be required by the designated department official to provide a hard copy of the document.

(3) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4) If agreed upon by the parties, service of a document required to be served on another party may be made upon the other party by facsimile transmission.

(b) *Confirmation of mailing and receipt dates.* (1) The mailing date of a notice from a designated department official initiating an action under this subpart is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is received is, as applicable--

(i) The date of receipt evidenced on the original receipt for a document sent by certified mail.

(ii) The date following the date recorded by the delivery service as the date material was sent for a document sent by next-day delivery service.

(iii) The date a document sent by regular mail is recorded, according to the regular business practice of the office receiving the document, as received.

(iv) The date a document sent by facsimile transmission is recorded as received by the facsimile equipment that receives the transmission.

(c) *Refusals.* If an institution or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1094)

Note: (a) and (b) redesignated as (b) and (c), respectively, and new paragraph (a) added March 10, 1993, effective April 28, 1993. Heading, (a)(1), (a)(2), (b) heading, (b)(1), (b)(2) introductory text, and (c) amended April 29, 1994, effective July 1, 1994.

Sec. 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official, and Secretary take into account--

(1)(i) The gravity of an institution's or third-party servicer's violation or failure to carry out the relevant statutory provision, regulatory provision, special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) The gravity of the institution's or servicer's misrepresentation;

(2) The size of the institution;

(3) The size of the servicer's business, including the number of institutions and students served by the servicer;

(4) In the case of a violation by a third-party servicer, the extent to which the servicer can document that the institution contributed to that violation; and

(5) For purposes of assessing a fine on a third-party servicer, the extent to which--

(i) Violations are caused by repeated mechanical systemic unintentional errors. The Secretary counts the total of violations caused by a repeated mechanical systemic unintentional error as a single violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system; and

(ii) The financial loss of Title IV, HEA program funds was attributable to a repeated mechanical systemic unintentional error.

(b) In determining the gravity of the institution's or servicer's violation, failure, or misrepresentation under paragraph (a) of this section, the designated department official, hearing official, and Secretary take into account the amount of any liability owed by the institution and any third-party servicer that contracts with the institution, and the number of students affected as a result of that violation, failure, or misrepresentation on--

(1) Improperly expended or unspent Title IV, HEA program funds received by the institution or servicer, as applicable; or

(2) Required refunds.

(c) Upon the request of the institution or third-party servicer, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

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Sec. 668.93 Limitation.

A limitation may include, as appropriate to the Title IV, HEA program in question--

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A limit on the number or size of institutions with which a third-party servicer may contract;

(d) A limit on the number of borrower or loan accounts that a third-party servicer may service under a contract with an institution;

(e) A limit on the responsibilities that a third-party servicer may perform under a contract with an institution;

(f) A requirement for a third-party servicer to perform additional responsibilities under a contract with an institution;

(g) A requirement that an institution obtain surety, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;

(h) A requirement that a third-party servicer obtain surety, in a specified amount, to assure the servicer's ability to meet the servicer's financial obligations under a contract; or

(i) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.94 Termination.

(a) A termination.

(1) Ends an institution's participation in a Title IV, HEA program or ends a third-party servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program;

(2) Ends the authority of a third-party servicer to administer any aspect of any institution's participation in that program;

(3) Prohibits an institution or third-party servicer, as applicable, or the Secretary from making or increasing awards under that program;

(4) Prohibits an institution or third-party servicer, as applicable, from making any other new commitments of funds under that program; and

(5) If an institution's participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program has been terminated, prohibits further guarantee commitments by the Secretary for loans under that program to students to attend that institution, and, if the institution is a lender under that program, prohibits further disbursements by the institution (whether or not guarantee commitments have been issued by the Secretary or a guaranty agency for those disbursements).

(b) After its participation in a Title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with 668.26 and with any additional requirements imposed under this part.

(c) If a third-party servicer's eligibility is terminated, the servicer must return to each institution that contracts with the servicer any funds received by the servicer under the applicable Title IV, HEA program on behalf of the institution or the institution's students or otherwise dispose of those funds under instructions from the Secretary. The servicer also must return to each institution that contracts with the servicer all records pertaining to the servicer's administration of that program on behalf of that institution.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.95 Reimbursements, refunds and offsets.

(a) The designated department official, hearing official, or Secretary may require an institution or third-party servicer to take reasonable and appropriate corrective action to remedy the institution's or servicer's violation, as applicable, of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, that the institution or servicer, as applicable, improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to--

(1) With respect to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs--

(i) Ineligible interest benefits, special allowances, or other claims paid by the Secretary; and

(ii) Discounts, premiums, or excess interest paid in violation of 34 CFR part 682; and

(2) With respect to all Title IV, HEA programs--

(i) Refunds required under program regulations; and

(ii) Any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution or third-party servicer to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.96 Reinstatement after termination.

(a)(1) An institution whose participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that participation.

(2) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that eligibility.

(b) An institution whose participation has been terminated or a third-party servicer whose eligibility has been terminated may request reinstatement only after the later of the expiration of--

(1) Eighteen months from the effective date of the termination; or

(2) A debarment or suspension under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(c) To be reinstated, an institution or third-party servicer must submit its request for reinstatement in writing to the Secretary and must--

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation or violations on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution or servicer, as applicable, has improperly received, withheld, disbursed, or caused to be disbursed;

(2) Meet all applicable requirements of this part; and

(3) In the case of an institution, enter into a new program participation agreement with the Secretary.

(d) The Secretary, within 60 days of receiving the reinstatement request--

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to a limitation or limitations.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section amended April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994.

Sec. 668.97 Removal of limitation.

(a) An institution whose participation in a Title IV, HEA program has been limited may not apply for removal of the limitation before the expiration of 12 months from the effective date of the limitation.

(b) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been limited may request removal of the limitation.

(c) The institution or servicer may not apply for removal of the limitation before the later of the expiration of--

(1) Twelve months from the effective date of the limitation; or

(2) A debarment or suspension under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(d) If the institution or servicer requests removal of the limitation, the request must be in writing and show that the institution or servicer, as applicable, has corrected the violation or violations on which the limitation was based.

(e) No later than 60 days after the Secretary receives the request, the Secretary responds to the institution or servicer--

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation or limitations.

(f) If the Secretary denies the request or establishes other limitations, the Secretary grants the institution or servicer, upon the institution's or servicer's request, an opportunity to show cause why the participation or eligibility, as applicable, should be fully reinstated.

(g) The institution's or servicer's request for an opportunity to show cause does not waive--

(1) The institution's right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation or limitations pending the outcome of the opportunity to show cause; and

(2) The servicer's right to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the servicer complies with the continuing limitation pending the outcome of the opportunity to show cause.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.98 Interlocutoty appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties if--

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1801-0003)

Note: Section added December 17, 1992, effective March 16, 1993. OMB control number added March 16, 1993, effective March 16, 1993.

Subpart H--Appeal Procedures for Audit Determinations and Program Review Determinations

Sec. 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(b) This subpart applies to any participating institution or third-party servicer that appeals a final audit determination or final program review determination.

(c) This subpart does not apply to proceedings governed by Subpart G of this part or to a determination that--

(1) An institution fails to meet the applicable statutory definition set forth in sections 435, 481, or 1201 of the HEA, except to the extent that such a determination forms the basis of a final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the Title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in Subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

(Authority: 20 U.S.C. 1094)

Note: (a) and (b) amended April 29, 1994, effective July 1, 1994.

Sec. 668.112 Definitions.

The following definitions apply to this subpart:

(a) *Final audit determination* means the written notice of a determination issued by a designated department official based on an audit of--

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any or all of the Title IV, HEA programs.

(b) *Final program review determination* means the written notice of a determination issued by a designated department official and resulting from a program compliance review of--

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer shall file its request for review and any records or materials admissible under the terms of Sec. 668.116(e) and (f), no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall--

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section amended April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994.

Sec. 668.114 Notification of hearing.

(a) Upon receipt of an institution's or third-party servicer's request for review, the designated department official arranges for a hearing before a hearing official.

(b) Within 30 days of the designated department official's receipt of an institution's or third-party servicer's request for review, the hearing official notifies the designated department official and the parties to the proceeding of the schedule for the submission of briefs by both the designated department official and, as applicable, the institution or servicer.

(c) The hearing official schedules the submission of briefs and of accompanying evidence admissible under the terms of Sec. 668.116 (e) and (f) to occur no later than 120 days from the date that the hearing official notifies the institution or servicer.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.115 Prehearing conference.

(a) In the event that the hearing official considers a prehearing conference necessary, he may convene a prehearing conference.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute. A prehearing conference consists of--

(1) A telephone conference call;

(2) An informal meeting of the parties with the hearing official; or

(3) The submission and exchange of written materials by the parties.

(c) All prehearing conferences requiring appearances by the parties shall take place in the Washington, D.C. metropolitan area.

(Authority: 20 U.S.C. 1094)

Note: (a) and (b)(2) amended October 19, 1992, effective December 3, 1992.

Sec. 668.116 Hearing.

(a) A hearing is a process conducted by the hearing official whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution or third-party servicer, as applicable, and by the designated department official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the hearing official.

(d) An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.

(2) That the institution or servicer complied with program requirements.

(e)(1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) Department of Education audit reports and audit work papers for audits performed by the department's Office of Inspector General.

(ii) In the case of an institution, institutional audit work papers, records, and other materials, if the institution provided those work papers, records, or materials to the Department of Education no later than the date by which the institution was required to file its request for review in accordance with Sec. 668.113.

(iii) In the case of a third-party servicer, the servicer's audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer, if the servicer provided those work papers, records, or materials to the Department of Education no later than the date that the servicer was required to file the request for review under Sec. 668.113.

(iv) Department of Education program review reports and work papers for program reviews.

(v) Institutional or servicer records and other materials (including records and other materials of any institution that contracts with the servicer) provided to the Department of Education in response to a program review, if the records or materials were provided to the Department of Education by the institution or servicer no later than the date by which the institution or servicer was required to file its request for review in accordance with Sec. 668.113.

(vi) Other Department of Education records and materials if the records and materials were provided to the hearing official no later than 30 days after the institution's or servicer's filing of its request for review.

(2) A party desiring to submit as evidence any materials described in paragraph (e)(1) of this section shall submit that evidence with its initial brief.

(f) The hearing official accepts only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence that shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) of this section include--

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution or third-party servicer other than the institution or servicer bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution or servicer bringing the appeal in the program areas at issue in the appeal.

(g)(1) The hearing official may schedule an oral argument if he or she determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated department official makes a transcribed record of the proceedings and makes one copy of that record available to each of the parties to the proceeding.

(h) Any oral argument shall take place in the Washington, D.C. metropolitan area.

(i) Either party may be represented by counsel.

(Authority: 20 U.S.C. 1094)

Note: (a) heading and (c) amended October 19, 1992, effective December 3, 1992. (b), (d), (e)(1), (f) and (g) amended April 29, 1994, effective July 1, 1994. (e)(1)(vi) amended November 29, 1994, effective July 1, 1995.

Sec. 668.117 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of the proceedings and the conduct of the parties following a request for review and takes all steps necessary to conduct fair and impartial proceedings.

(b) The hearing official is not authorized to issue subpoenas or compel discovery, as provided for in the Federal Rules of Civil Procedure.

(c) The hearing official shall take whatever measures are appropriate to expedite the proceedings. These measures may include, but are not limited to, one or more of the following:

(1) Scheduling of conferences.

(2) Setting time limits for oral arguments and the submission of briefs.

(3) Terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the hearing official.

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not--

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

Note: Section amended October 19, 1992, effective December 3, 1992.

Sec. 668.118 Decision of the hearing official.

(a) Upon review of the parties' written submissions and termination of the oral argument if one is held, the hearing official issues a written decision.

(b) The hearing official's decision states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part.

(c) The hearing official bases any findings of fact only on evidence properly presented before him, on matters given official notice, or on facts stipulated to by the parties.

(Authority: 20 U.S.C. 1094)

Note: Section amended October 19, 1992, effective December 3, 1992.

Sec. 668.119 Appeal to the Secretary.

(a) Within 30 days of its receipt of the initial decision of the hearing official, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the hearing official should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by--

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties.

(d) The opposing party shall file its response to the appeal, if any, with the Secretary within 30 days of that party's receipt of the appeal to the Secretary.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

(Authority: 20 U.S.C. 1094)

Note: (a) amended October 19, 1992, effective December 3, 1992. (a) and (d) amended December 17, 1992, effective January 31, 1993.

Sec. 668.120 Decision of the Secretary.

(a)(1) The Secretary issues a final decision. The Secretary may affirm, modify, or reverse the decision of the hearing official, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision.

(2) The Secretary may delegate the performance of functions under this section to a designated department official.

(b) If the Secretary modifies, remands, or overturns the initial decision of the hearing official, the Secretary issues a decision that--

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the hearing official for further review or determination of fact, becomes final upon its issuance.

(Authority: 20 U.S.C. 1094)

Note: Section amended October 19, 1992, effective December 3, 1992. (a) amended December 17, 1992, effective January 31, 1993.

Sec. 668.121 Final decision of the Department.

(a) In the event that the initial decision of the hearing official is appealed, the decision of the Secretary is the final decision of the Department, unless the hearing official's decision is remanded by the Secretary.

(b) In the event that the initial decision of the hearing official is not appealed within the time limit specified in Sec. 668.119 (a), the initial decision automatically becomes the final decision of the Department.

(Authority: 20 U.S.C. 1094)

Note: Section amended October 19, 1992, effective December 3, 1992.

Sec. 668.122 Determination of filing, receipt, and submission dates.

(a) The request for review, appeals, and other written submissions referred to in this subpart may be either hand-delivered or mailed.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates shall be based on either the date of hand-delivery or the date of receipt indicated on the original U.S. Postal Service return receipt.

(Authority: 20 U.S.C. 1094)

Sec. 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or program review determination, subject to the provisions of Sec. 668.24(c)(3), the Department of Education will take steps to collect the debt at issue or otherwise effect the determination that was subject to the request for review.

(Authority: 20 U.S.C. 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties if--

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties by certified mail, return receipt requested.

(e) A party's response to a petition or certification for interlocutory review must be filed within seven days after service of the petition or statement, as applicable, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official by hand delivery or regular mail.

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Authority: 20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1801-0003)

Note: Section added December 17, 1992, effective March 16, 1993. OMB control number added March 16, 1993, effective March 16, 1993.

Subpart I--Immigration-Status Confirmation

Note: Section added January 7, 1993, effective May 4, 1993.

Sec. 668.130 General.

(a) *Scope and purpose*. The regulations in this subpart govern the responsibilities of institutions and students in determining the eligibility of those noncitizen applicants for Title IV, HEA assistance who must, under Sec. 668.7(a)(4)(ii), produce evidence from the United States Immigration and Naturalization Service (INS) that they are permanent residents of the United States or in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents.

(b) *Student responsibility*. At the request of the Secretary or the institution at which an applicant for Title IV, HEA financial assistance is enrolled or accepted for enrollment, an applicant who asserts eligibility under Sec. 668.7(a)(4)(ii) shall provide documentation from the INS of immigration status.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.131 Definitions.

The following definitions apply to this subpart:

Eligible noncitizen: An individual possessing an immigration status that meets the requirements of Sec. 668.7(a)(4)(ii).

Immigration status: The status conferred on a noncitizen under the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1182.

Primary confirmation: A process by which the Secretary, by means of a matching program conducted with the INS, compares the information contained in an Application for Federal Student Aid or a multiple data entry application regarding the immigration status of a noncitizen applicant for Title IV, HEA assistance with records of that status maintained by the INS in its Alien Status Verification Index (ASVI) system for the purpose of determining whether a student's immigration status meets the requirements of Sec. 668.7(a)(4)(ii) and reports the results of this comparison on an output document.

Secondary confirmation: A process by which the INS, in response to the submission of INS Document Verification Form G-845 by an institution, searches pertinent paper and automated INS files, other than the ASVI database, for the purpose of determining a student's immigration status and the validity of the submitted INS documents, and reports the results of this search to the institution.

(Authority: 20 U.S.C. 1091)

Note: *Output document* removed March 16, 1994, effective July 1, 1994.

Sec. 668.132 Institutional determinations of eligibility based on primary confirmation.

(a) Except as provided in Sec. 668.133(a)(1)(ii), the institution shall determine a student to be an eligible noncitizen if the institution receives an output document for that student establishing that--

(1) The INS has confirmed the student's immigration status; and

(2) The student's immigration status meets the noncitizen eligibility requirements of Sec. 668.7(a)(4)(ii).

(b) If an institution determines a student to be an eligible noncitizen in accordance with paragraph (a) of this section, the institution may not require the student to produce the documentation otherwise required under Sec. 668.7(a)(4)(ii).

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

(a) *General requirements*. Except as provided in paragraph (b) of this section, an institution shall require the student to produce the documentation required under Sec. 668.7(a)(4)(ii) and request the INS to perform secondary confirmation for a student claiming eligibility under Sec. 668.7(a)(4)(ii), in accordance with the procedures set forth in Sec. 668.135, if--

(1) The institution--

(i) Receives an output document indicating that the student must provide the institution with evidence of the student's immigration status required under Sec. 668.7(a)(4)(ii); or

(ii) Receives an output document that satisfies the requirements of Sec. 668.132(a) (1) and (2), but the institution--

(A) Has documentation that conflicts with immigration-status documents submitted by the student or the immigration status reported on the output document; or

(B) Has reason to believe that the immigration status reported by the student or on the output document is incorrect; and

(2) The institution determines that the immigration-status documents submitted by the student constitute reasonable evidence of the student's claim to be an eligible noncitizen.

(b) *Exclusions from secondary confirmation.* (1) An institution may not require the student to produce the documentation requested under Sec. 668.33(a)(2) and may not request that INS perform secondary confirmation, if the student--

(i) Demonstrates eligibility under the provisions of Sec. 668.33 (a)(1) or (b); or

(ii) Demonstrated eligibility under the provisions of Sec. 668.33(a)(2) in a previous award year as a result of secondary confirmation and the documents used to establish that eligibility have not expired; and

(iii) The institution does not have conflicting documentation or reason to believe that the student's claim of citizenship or immigration status is incorrect.

(Authority: 20 U.S.C. 1091, 1094)

(Approved by the Office of Management and Budget under control number 1840-0650)

Note: OMB control number added May 4, 1993, effective May 4, 1993. (b) amended December 1, 1995, effective July 1, 1996.

Sec. 668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.

(a) An institution shall establish and use written policies and procedures for requesting proof and securing confirmation of the immigration status of applicants for Title IV, HEA student financial assistance who claim to meet the eligibility requirements of Sec. 668.7(a)(4)(ii). These policies and procedures must include--

(1) Providing the student a deadline by which to provide the documentation that the student wishes to have considered to support the claim that the student meets the requirements of Sec. 668.7(a)(4)(ii);

(2) Providing to the student information concerning the consequences of a failure to provide the documentation by the deadline set by the institution; and

(3) Providing that the institution will not make a determination that the student is not an eligible noncitizen until the institution has provided the student the opportunity to submit the documentation in support of the student's claim of eligibility under Sec. 668.7(a)(4)(ii).

(b) An institution shall furnish, in writing, to each student required to undergo secondary confirmation--

(1) A clear explanation of the documentation the student must submit as evidence that the student satisfies the requirements of Sec. 668.7(a)(4)(ii); and

(2) A clear explanation of the student's responsibilities with respect to the student's compliance with Sec. 668.7(a)(4)(ii), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action, as specified in Sec. 668.137.

(Authority: 20 U.S.C. 1091, 1092, 1094)

(Approved by the Office of Management and Budget under control number 1840-0650)

Note: OMB control number added May 4, 1993, effective May 4, 1993.

Sec. 668.135 Institutional procedures for completing secondary confirmation.

Within 10 business days after an institution receives the documentary evidence of immigration status submitted by a student required to undergo secondary confirmation, the institution shall--

(a) Complete the request portion of the INS Document Verification Request Form G-845;

(b) Copy front and back sides of all immigration-status documents received from the student and attach copies to the Form G-845; and

(c) Submit Form G-845 and attachments to the INS District Office.

(Authority: 20 U.S.C. 1091, 1094)

(Approved by the Office of Management and Budget under control number 1840-0650)

Note: OMB control number added May 4, 1993, effective May 4, 1993.

Sec. 668.136 Institutional determinations of eligibility based on INS responses to secondary confirmation requests.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution that has requested secondary confirmation under Sec. 668.133(a) shall make its determination concerning a student's eligibility under Sec. 668.7(a)(4)(ii) by relying on the INS response to the Form G-845.

(b) An institution shall make its determination concerning a student's eligibility under Sec. 668.7(a)(4)(ii) pending the institution's receipt of an INS response to the institution's Form G-845 request concerning the student, if--

(1) The institution has given the student an opportunity to submit documents to the institution to support the student's claim to be an eligible noncitizen;

(2) The institution possesses sufficient documentation concerning a student's immigration status to make that determination;

(3) At least 15 business days have elapsed from the date that the institution sent the Form G-845 request to the INS;

(4) The institution has no documentation that conflicts with the immigration-status documentation submitted by the student; and

(5) The institution has no reason to believe that the immigration status reported by the applicant is incorrect.

(c) An institution shall establish and use policies and procedures to ensure that, if the institution has disbursed or released Title IV, HEA funds to the student in the award year or employed the student under the Federal Work-Study Program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during that award year, the institution provides the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

(a) A student shall submit before a deadline specified by the institution all documentation the student wishes to have considered to support a claim that the student meets the requirements of Sec. 668.7(a)(4)(ii). The deadline, set by the institution, must be not less than 30 days from the date the institution receives the student's output document.

(b) If a student fails to submit the documentation by the deadline established in accordance with paragraph (a) of this section, the institution may not disburse to the student, or certify the student as eligible for, any Title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; or certify a Federal Stafford, Federal PLUS, or Federal SLS loan application for the student for that period of enrollment.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.138 Liability.

(a) A student is liable for any SSIG, Federal SEOG, or Federal Pell Grant payment and for any Federal Stafford, Federal SLS, or Federal Perkins loan made to him or her if the student was ineligible for the Title IV, HEA assistance.

(b) A Federal PLUS loan borrower is liable for any Federal PLUS loan made to him or her on behalf of an ineligible student.

(c) The Secretary does not take any action against an institution with respect to an error in the institution's determination that a student is an eligible noncitizen if, in making that determination, the institution followed the provisions in this subpart and relied on--

(1) An output document for that student indicating that the INS has confirmed that the student's immigration status meets the eligibility requirements for Title IV, HEA assistance;

(2) An INS determination of the student's immigration status and the authenticity of the student's immigration documents provided in response to the institution's request for secondary confirmation; or

(3) Immigration-status documents submitted by the student and the institution did not have reason to believe that the documents did not support the student's claim to be an eligible noncitizen.

(d) Except as provided in paragraph (c) of this section, if an institution makes an error in its determination that a student is an eligible noncitizen, the institution is liable for any Title IV, HEA disbursements made to this student during the award year or period of enrollment for which the student applied for Title IV, HEA assistance.

(Authority: 20 U.S.C. 1091, 1094)

Sec. 668.139 Recovery of payments and loan disbursements to ineligible students.

(a) If an institution makes a payment of a grant or a disbursement of a Federal Perkins loan to an ineligible student for which it is not liable in accordance with Sec. 668.138, it shall assist the Secretary in recovering the funds by--

(1) Making a reasonable effort to contact the student; and

(2) Making a reasonable effort to collect the payment or Federal Perkins loan.

(b) If an institution causes a Federal Stafford, Federal SLS, or Federal PLUS loan to be disbursed to an ineligible student or Federal PLUS loan borrower for which it is not liable in accordance with Sec. 668.138, it shall assist the Secretary in recovering the funds by notifying the lender that the student has failed to establish eligibility under the requirements of Sec. 682.201(d).

(c) If an institution is liable for payment of a grant or Federal Perkins loan to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's Federal Perkins loan fund or Federal Pell Grant, Federal SEOG, or SSIG amount, even if the institution cannot collect the payment or disbursement from the student.

(d) If an institution is liable for a Federal Stafford, Federal SLS, or Federal PLUS loan disbursement to an ineligible student, the institution shall repay an amount equal to the disbursement to the Federal Stafford, Federal SLS, or Federal PLUS lender and provide written notice to the borrower.

(Authority: 20 U.S.C. 1091, 1094)

Subpart J--Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

Note: Subpart added December 1, 1995, effective July 1, 1996.

Sec. 668.141 Scope.

(a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive Title IV, HEA program funds by--

(1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(2) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.

(b) Under this subpart, the Secretary sets forth--

(1) The procedures and criteria the Secretary uses to approve tests;

(2) The basis on which the Secretary specifies a passing score on each approved test;

(3) The procedures and conditions under which the Secretary determines that an approved test is independently administered; and

(4) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

(Authority: 20 U.S.C. 1091(d))

Sec. 668.142 Special definitions.

The following definitions apply to this subpart:

Assessment center: A center that--

(1) Is located at an eligible institution that provides two-year or four-year degrees, or qualifies as an eligible public vocational institution, i.e. a "postsecondary vocational institution;"

(2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;

(3) Is independent of the admissions and financial aid processes at the institution at which it is located;

(4) Is staffed by professionally trained personnel; and

(5) Does not have as its primary purpose the administration of ability-to-benefit tests.

Computer-based test: A test taken by a student on a computer and scored by a computer.

Disabled student: A student who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

General learned abilities: Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

Non-native speaker of English: A person whose first language is not English and who is not fluent in English.

Secondary school level: As applied to "content," "curricula," or "basic verbal and quantitative skills," refers to basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

Test administrator: An individual who may give tests under this subpart.

Test item: A question on a test.

Test publisher: An individual, organization, or agency that owns a registered copyright of a test, or is licensed by the copyright holder to sell or distribute a test.

(Authority: 20 U.S.C. 1091(d))

Sec. 668.143. Approval of State tests or assessments.

(a) The Secretary approves tests or other assessments submitted by a State that the State uses to measure a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State.

(b) The Secretary approves passing scores or other methods of evaluation established by the State for each test or assessment described in paragraph (a) of this section.

(c) If the Secretary approves a State's tests and assessments and the passing scores on those tests and assessments under paragraphs (a) and (b) of this section, that test or assessment may be used, for purposes of section 484(d) of the HEA, only for students who attend eligible institutions located in that State.

(d) If a State wishes to have the Secretary approve its tests or assessments under this section, the State shall--

(1) Submit to the Secretary those tests and assessments, its passing scores on those tests and assessments, and the educational standards those tests and assessments measure at such time and in such manner as the Secretary may prescribe;

(2) Provide the Secretary with an explanation of how the tests, assessments, and passing scores are appropriate in light of the State's educational standards; and

(3) Provide the Secretary with an assurance that the tests and assessments will be administered in an independent, fair, and secure manner.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.144 Application for test approval.

Except as provided in Sec. 668.143--

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test;

(b) A test publisher that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application shall contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in this section; and

(c) A test publisher shall include with its application--

(1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests and abbreviated tests for which approval is being sought;

(2) The name, address, and telephone number of a contact person to whom the Secretary may address inquiries;

(3) Each edition and form of the test for which the publisher requests approval;

(4) The distribution of test scores for each edition, form, level, sub-test, or partial battery, for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with Sec. 668.147;

(5) Documentation of test development, including a history of the test's use;

(6) Norming data and other evidence used in determining the distribution of test scores;

(7) Material that defines the content domains addressed by the test;

(8) For tests first published five years or more before the date submitted to the Secretary for review and approval,

documentation of periodic reviews of the content and specifications of the test to ensure that the test continues to reflect secondary school level verbal and quantitative skills;

(9) If a test has been revised from the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in Sec. 668.146(b)(2), and an analysis of the effects of time on performance;

(11) A technical manual that includes--

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using--

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the tests for persons with documented disabilities.

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in Sec. 668.146(b);

(14) For performance-based tests or tests containing performance-based sections, a description of the training or certification required of test administrators and scorers by the test publisher;

(15) A description of retesting procedures and the analysis upon which the criteria for retesting are based; and

(16) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in Sec. 668.146.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.145 Test approval procedures.

Except as provided in Sec. 668.143--

(a)(1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment, who possess appropriate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in Secs. 668.146, 668.147, 668.148, or 668.149, as appropriate, and to advise the Secretary of their determinations;

(2) If the test involves a language other than English, the Secretary selects at least one individual described in paragraph (a)(1) of this section who is fluent in the language in which the test is written to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in Secs. 668.148 and 668.149;

(b) The Secretary determines whether the test publisher's test meets the criteria and requirements for approval after taking the advice of the experts into account;

(c)(1) If the Secretary determines that a test satisfies the criteria and requirements for test approval, the Secretary notifies the test publisher of the Secretary's decision, and publishes the name of the test and the passing scores in the Federal Register.

(2) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary notifies the test publisher of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.

(3) The test publisher may request that the Secretary reevaluate the Secretary's decision. Such a request must be accompanied by--

(i) Documentation and information that address the reasons for the non-approval of the test; and

(ii) An analysis of why the information and documentation submitted meet the criteria and requirements for test approval notwithstanding the Secretary's earlier decision to the contrary.

(d)(1) The Secretary approves a test for a period not to exceed five years from the date of the Secretary's written notice to the test publisher.

(2) The Secretary extends the approval period of a test to include the period of review if the test publisher re-submits the test for review and approval under Sec. 668.144 at least six months before the date on which the test approval is scheduled to expire;

(e) The approval of a test may be withdrawn if the Secretary determines that the publisher violated any terms of the agreement described in Sec. 668.150, or that the information the publisher submitted as a basis for approval of the test was inaccurate;

(f) If the Secretary revokes approval of a previously approved test, the Secretary publishes a notice of that revocation in the Federal Register. The revocation becomes effective 120 days from the date the notice of revocation is published in the Federal Register; and

(g) For test batteries that contain multiple sub-tests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those subtests covering verbal and quantitative domains.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.146 Criteria for approving tests.

Except as provided in Sec. 668.143--

(a) Except as provided in Sec. 668.148, the Secretary approves a test under this subpart if the test meets the criteria set forth in paragraph (b) of this section and the test publisher satisfies the requirements set forth in paragraph (c) of this section;

(b) To be approved under this subpart, a test shall--

(1) Assess secondary school level basic verbal and quantitative skills and general learned abilities;

(2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to--

(i) Adequately represent each domain; and

(ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;

(3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (a)(2) of this section;

(4) Have all forms (including short forms) comparable in reliability;

(5) If the test is revised, have new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values, and scores; and

(6) Meet all primary and applicable conditional and secondary standards for test construction provided in the 1985 edition of the Standards for Educational and Psychological Testing, with amendments dated June 2, 1989, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Office of Postsecondary Education, Room 4318, ROB-3, 600 Independence Avenue, S.W., Washington, D.C. 20202 and at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC. The standards may be obtained from the American Psychological Association, Inc., 750 First Street, N.W., Washington, DC 20026.

(7) Have publisher's guidelines for retesting, including time between test-taking, be based on empirical analyses that are part of the studies of test reliability; and

(c) In order for a test to be approved under this subpart, a test publisher shall--

(1) Include in the test booklet or package--

(i) Clear, specific, and complete instructions for test administration, including information for test takers on the purpose, timing, and scoring of the test; and

(ii) Sample questions representative of the content and average difficulty of the test;

(2) Have two or more secure, equated, alternate forms of the test;

(3) Except as provided in Secs. 668.148 and 668.149, provide tables of distributions of test scores which clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years prior to the date on that the test is submitted to the Secretary for approval under Sec. 668.144;

(4) Norm the test with--

(i) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(ii) A contemporary population representative of persons who are beyond the usual age of compulsory school attendance in the United States; and

(5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a distribution of test scores as described in paragraph (c)(3) of this section that allows the Secretary to prescribe either--

(i) A passing score for each sub-test; or

(ii) One composite passing score for verbal skills and one composite passing score for quantitative skills.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.147 Passing scores.

Except as provided in Secs. 668.143, 668.148 and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean for students with high school diplomas who have taken the test within three years before the date on which the test is submitted to the Secretary for approval.

(Authority: 20 U.S.C. 1091(d))

Sec. 668.148 Additional criteria for the approval of certain tests.

Except as provided in Sec. 668.143--

(a) In addition to satisfying the criteria in Sec. 668.146, to be approved by the Secretary, a test or a test publisher must meet the following criteria, if applicable:

(1) In the case of a test that is performance-based, or includes performance-based sections, for measuring writing, speaking, listening, or quantitative problem-solving skills, the test publisher must provide--

(i) A minimum of four parallel forms of the test; and

(ii) A description of the training provided to test administrators, and the criteria under which trained individuals are certified to administer and score the test.

(2) In the case of a test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be--

(i) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;

(ii) Supported by documentation detailing the development of normative data;

(iii) If translated from an English version, supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;

(iv) Developed in accordance with guidelines provided in the 1985 edition of the "Testing Linguistic Minorities" section of the Standards for Educational and Psychological Testing, with amendments dated June 2, 1989, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Office of Postsecondary Education, Room 4318, ROB-3, 600 Independence Avenue, S.W., Washington, D.C. 20202 and at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC. The standards may be obtained from the American Psychological

Association, Inc., 750 First Street, N.W., Washington, DC 20026; and

(v)(A) If the test is in Spanish, accompanied by a distribution of test scores that clearly indicates the mean score and standard deviation for Spanish-speaking students with high school diplomas who have taken the test within 5 years before the date on which the test is submitted to the Secretary for approval; and

(B) If the test is in a language other than Spanish, accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of the intended population and large enough to produce stable norms.

(3) In the case of a test that is modified for use for persons with disabilities, the test publisher must--

(i) Follow guidelines provided in the "Testing People Who Have Handicapping Condition" section of the Standards for Educational and Psychological Testing;

(ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(iii) Recommend passing score(s) based on the previous performance of test-takers.

(4) In the case of a computer-based test, the test publisher must--

(i) Provide documentation to the Secretary that the test complies with the basic principles of test construction and standards of reliability and validity as promulgated in the Standards for Educational and Psychological Testing, as well as specific guidelines set forth in the American Psychological Association's Guidelines for Computer-based Tests and Interpretations (1986);

(ii) Provide test administrators with instructions for familiarizing test takers with computer hardware prior to test-taking; and

(iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are generated from an item pool, provide documentation of the methods of item selection for alternate forms; and

(b) If a test is designed solely to measure the English language competence of non-native speakers of English--

(1) The test must meet the criteria set forth in Sec. 668.146(b)(6), and Sec. 668.146 (c)(1), (c)(2), and (c)(4); and

(2) The test publisher must recommend a passing score based on the mean score of test takers beyond the age of compulsory school attendance who entered U.S. high school equivalency programs, formal training programs, or bilingual vocational programs.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.149 Special provisions for the approval of assessment procedures for special populations for whom no tests are reasonably available.

If no test is reasonably available for persons with disabilities or students whose native language is not English and who are not fluent in English, so that no test can be approved under Secs. 668.146 or 668.148 for these students, the following procedures apply:

(a) *Persons with disabilities.* (1) The Secretary considers a modified test or testing procedure, or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of disabled students to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.

(2) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test developer, provided that the test administrator--

(i) Uses those procedures or instruments;

(ii) Maintains appropriate documentation, including a description of the procedures or instruments, their content domains, technical properties, and scoring procedures; and

(iii) Observes recommended passing scores.

(b) *Students whose native language is not English.* The Secretary considers a test in a student's native language for a student whose native language is not English to be an approved test under this subpart if--

(1) The Secretary has not approved any test in that native language;

(2) The test was not previously rejected for approval by the Secretary;

(3) The test measures both basic verbal and quantitative skills at the secondary school level; and

(4) The passing scores and the methods for determining the passing scores are fully documented.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.150 Agreement between the Secretary and a test publisher.

(a) If the Secretary approves a test under this subpart, the test publisher must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for Title IV, HEA program funds.

(b) The agreement between a test publisher and the Secretary provides that the test publisher shall--

(1) Allow only test administrators that it certifies to give its test;

(2) Certify test administrators who have--

(i) The necessary training, knowledge, and skill to test students in accordance with the test publisher's testing requirements; and

(ii) The ability and facilities to keep its test secure against disclosure or release;

(3) Decertify a test administrator for a period that coincides with the period for which the publisher's test is approved if the test publisher finds that the test administrator--

(i) Has repeatedly failed to give its test in accordance with the publisher's instructions;

(ii) Has not kept the test secure;

(iii) Has compromised the integrity of the testing process; or

(iv) Has given the test in violation of the provisions contained in Sec. 668.151;

(4) Score a test answer sheet that it receives from a test administrator;

(5) If a computer-based test, provide the test administrator with software that will:

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher a secure write-protected diskette copy of the test taker's performance on each test item and the test taker's test scores; and

(iii) Prohibit any changes in test taker responses or test scores.

(6) Promptly send to the student and the institution the student indicated he or she is attending or scheduled to attend a notice stating the student's score for the test and whether or not the student passed the test;

(7) Keep for a period of three years each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test;

(8) Three years after the date the Secretary approves the test and for each subsequent three-year period, analyze the test scores of students to determine whether the test scores produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis; and

(9) Upon request, give the Secretary, a guaranty agency, or an accrediting agency access to test records or other documents related to an audit, investigation, or program review of the institution, test publisher, or test administrator.

(c)(1) The Secretary may terminate an agreement with a test publisher if the test publisher fails to carry out the terms of the agreement described in paragraph (b) of this section.

(2) Before terminating the agreement, the Secretary gives the test publisher the opportunity to show that it has not failed to carry out the terms of its agreement.

(3) If the Secretary terminates an agreement with a test publisher under this section, the Secretary notifies institutions through publication in the Federal Register when they may no longer use the publisher's test(s) for purposes of determining a student's eligibility for Title IV, HEA program funds.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

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Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.151 Administration of tests.

(a)(1) To establish a student's eligibility for Title IV, HEA program funds under this subpart, if a student has not passed an approved state test, under Sec. 668.143, an institution must select a certified test administrator to give an approved test.

(2) An institution may use the results of an approved test to determine a student's eligibility to receive Title IV, HEA programs funds if the test was independently administered and properly administered.

(b) The Secretary considers that a test is independently administered if the test is--

(1) Given at an assessment center by a test administrator who is an employee of the center; or

(2) Given by a test administrator who--

(i) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the interest obtained through its agreement to administer the test, and has no controlling interest in any other educational institution;

(ii) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(iii) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution or its parent corporation or at any other institution, or a member of the family of any of the above individuals; and

(iv) Is not a current or former student of the institution.

(c) The Secretary considers that a test is not independently administered if an institution--

(1) Compromises test security or testing procedures;

(2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test;

(3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator--

(1) Is certified by the test publisher to give the publisher's test;

(2) Administers the test in accordance with instructions provided by the test publisher, and in a manner that ensures the integrity and security of the test;

(3) Makes the test available only to a test-taker, and then only during a regularly scheduled test;

(4) Secures the test against disclosure or release;

(5) Submits the completed test to the test publisher within two business days after test administration in accordance with the test publisher's instructions; and

(6) Upon request, gives the Secretary, guaranty agency, licensing agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of the institution, or test publisher.

(e) Except as provided in Sec. 668.152, a certified test administrator may not score a test.

(f) A student who fails to pass a test approved under this subpart may not retake the same form of the test for the period prescribed by the test's publisher.

(g) An institution shall maintain a record for each student who took a test under this subpart of--

(1) The test taken by the student;

(2) The date of the test; and

(3) The student's scores as reported by the test publisher, assessment center, or State.

(Authority: U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.152 Administration of tests by assessment centers.

(a)(1) If a test is given by an assessment center, the assessment center shall properly administer the test as described in Sec. 668.151(d).

(b)(1) Unless an agreement between a test publisher and an assessment center indicates otherwise, an assessment center scores the tests it gives and promptly notifies the institution and the student of the student's score on the test and whether the student passed the test.

(2) If the assessment center scores the test, it must provide annually to the test publisher--

(i) All copies of completed tests; or

(ii) A report listing all test-takers' scores and institutions to which the scores were sent.

(Authority: U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.153 Administration of tests for students whose native language is not English or for persons with disabilities.

Except as provided in Sec. 668.143--

(a) Students whose native language is not English. For a student whose native language is not English and who is not fluent in English, the institution shall use the following tests, as applicable:

(1) If the student is enrolled in a program conducted entirely in his or her native language, the student must take a test approved under Secs. 668.146 and 668.148(a)(2), or 668.149(b).

(2) If the student is enrolled in a program that is taught in English with an ESL component, and the student is enrolled in that program and the ESL component, the student must take either an ESL test approved under Sec. 668.148(b), or a test in the student's native language approved under Secs. 668.146, 668.148 or 668.149.

(3) If the student is enrolled in a program that is taught in English without an ESL component, or the student does not enroll in the ESL component if the institution offers such a component, the student must take a test in English approved under Sec. 668.146.

(4) If the student enrolls in an ESL program, the student must take an ESL test approved under Sec. 668.148(b); and

(b) Persons with disabilities. (1) An institution shall use a test described in Sec. 668.148(a)(3) or 668.149(a) for a student with a documented impairment who has neither a high school diploma nor its equivalent and who is applying for Title IV, HEA program funds.

(2) The test must reflect the student's skills and general learned abilities rather than reflect the student's impairment.

(3) The institution shall document that a student is disabled and unable to be evaluated by the use of a conventional test from the list of tests approved by the Secretary.

(4) Documentation of a student's impairment may be satisfied by--

(i) A written determination, including a diagnosis and recommended testing accommodations, by a licensed psychologist or medical physician; or

(ii) A record of such a determination by an elementary or secondary school or a vocational rehabilitation agency, including a diagnosis and recommended testing accommodations.

(Authority: U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

Note: OMB control number added June 19, 1996, effective July 1, 1996.

Sec. 668.154 Institutional accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution--

(a) Used a test administrator who was not independent of the institution at the time the test was given;

(b) Compromises the testing process in any way; or

(c) Is unable to document that the student received a passing score on an approved test.

(Authority: U.S.C. 1091(d))

Sec. 668.155 Transitional rule for the 1996-97 award year.

(a) Notwithstanding any other provision of this part, an institution may continue to base an eligibility determination under section 484(d) of the HEA for a student on a test that was an approved test as of June 30, 1996, and the passing score on that test, until 60 days after the Secretary publishes in the Federal Register the name of an approved test and the passing score on that test that is appropriate for that student.

(b) If an institution properly based a student's eligibility determination for purposes of section 484(d) of the HEA on a test and passing score that was in effect on June 30, 1996, the institution does not have to redetermine the student's eligibility based upon a test and passing score that was approved under Secs. 668.143 through 668.149.

(Authority: U.S.C. 1091(d))

Sec. 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for Title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.

(b) The Secretary approves a State's process if--

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State's process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services--

(1) Orientation regarding the institution's academic standards and requirements, and student rights;

(2) Assessment of each student's existing capabilities through means other than a single standardized test;

(3) Tutoring in basic verbal and quantitative skills, if appropriate;

(4) Assistance in developing educational goals;

(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities; and

(6) Follow-up by teachers and counselors regarding the student's classroom performance and satisfactory progress toward program completion.

(d) A State process must--

(1) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process;

(2) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and

(3) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements.

(e)(1) The Secretary responds to a State's request for approval of its State's process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process becomes effective.

(2) An approved State process becomes effective for purposes of determining student eligibility for Title IV, HEA program funds under this subpart six months after the date on which the State submits the process to the Secretary for approval, if the Secretary approves, or does not disapprove, the process during that six month period.

(f) The Secretary approves a State process for a period not to exceed five years.

(g)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(h) The State shall calculate the success rates as referenced in paragraph (b) of this section by--

(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and--

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;

(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from participating institutions and received a 100 percent refund of their tuition under the institutions' refund policies;

(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;

(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.

(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(Authority: 20 U.S.C. 1091(d))

(Approved by the Office of Management and Budget under control number 1840-0627)

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Subpart K--Cash Management

Note: Subpart added December 1, 1994, effective July 1, 1995. Subpart amended November 29, 1996, effective July 1, 1997.

Sec. 668.161 Scope and purpose.

(a) *General.* (1) This subpart establishes the rules and procedures under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. This subpart is intended to--

(i) Promote sound cash management of title IV, HEA program funds by an institution;

(ii) Minimize the financing costs to the Federal government of making title IV, HEA program funds available to a student or an institution; and

(iii) Minimize the costs that accrue to a student under a title IV, HEA loan program.

(2) The rules and procedures that apply to an institution under this subpart also apply to a third-party servicer.

(3) As used in this subpart--

(i) The title IV, HEA programs include only the Federal Pell Grant, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL programs;

(ii) The term "parent" means a parent borrower under the PLUS programs;

(iii) With regard to the FFEL Programs, the term "disburse" means the same as deliver loan proceeds under 34 CFR Part 682 of the FFEL Program regulations; and

(iv) A day is a calendar day unless otherwise specified.

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures and requirements under this subpart.

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program under the FWS Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. FFEL program funds are also held in trust for the lenders and guaranty agencies, in addition to the student beneficiaries and the Secretary, under 34 CFR 682.207. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1094)

Sec. 668.162 Requesting funds.

(a) *General.* (1) The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance, reimbursement, just-in-time, or cash monitoring payment methods.

(2) Each time an institution requests funds from the Secretary, the institution must identify the amount of funds requested by program and fiscal year designation that the Secretary assigned to the authorization for those funds.

(b) *Advance payment method.* Under the advance payment method--

(1) An institution submits a request for funds to the Secretary. The institution's request for funds may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;

(2) If the Secretary accepts that request, the Secretary initiates an electronic funds transfer (EFT) of that amount to a bank account designated by the institution; and

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) *Just-in-time payment method.* Under the just-in-time payment method--

(1) For each student or parent that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student or parent. As part of those records, the institution reports the date and amount of the disbursements that it will make or has made to that student or that student's parent;

(2) For each record the Secretary accepts for a student or parent, the Secretary provides by EFT the corresponding disbursement amount to the institution on or before the date reported by the institution for that disbursement;

(3) When the institution receives the funds for each record accepted by the Secretary, the institution may disburse those funds based on its determination at the time the institution transmitted that record to the Secretary that the student is eligible for that disbursement; and

(4) The institution must report any adjustment to a previously accepted record within the time established by the Secretary in a notice published in the Federal Register.

(d) *Reimbursement payment method.* Under the reimbursement payment method--

(1) An institution must first make disbursements to students and parents for the amount of funds those students and parents are eligible to receive under the Federal Pell Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement if the institution has either credited a student's account or paid a student or parent directly with its own funds;

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the actual disbursements the institution has made to students and parents included in that request;

(3) As part of the institution's reimbursement request, the Secretary requires the institution to--

(i) Identify the students for whom reimbursement is sought; and

(ii) Submit to the Secretary or entity approved by the Secretary documentation that shows that each student and parent included in the request was eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(4) The Secretary approves the amount of the institution's reimbursement request for a student or parent and pays the institution that amount, if the Secretary determines with regard to that student or parent that the institution--

(i) Accurately determined the student's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds paid to the student or parent; and

(iii) Submitted the documentation required under paragraph (d)(3) of this section.

(e) *Cash monitoring payment method.* Under the cash monitoring payment method, the Secretary provides title IV, HEA program funds to an institution under the provisions described in paragraph (e)(1) or (e)(2) of this section. Under either paragraph (e)(1) or (e)(2) of this section, an institution must first make disbursements to students and parents for the amount of title IV, HEA program funds that those students and parents are eligible to receive, before the institution--

(1) Submits a request for funds under the provisions of the advance payment method described in paragraph (b) of this section, except that the institution's request may not exceed the amount of the actual disbursements the institution made to the students and parents included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

(Authority: 20 U.S.C. 1094)

(a)(1) revised and (e) added November 25, 1997, effective July 1, 1998.

Sec. 668.163 Maintaining and accounting for funds.

(a)(1) *Bank or investment account.* An institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.

(2) For each bank or investment account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by--

(i) Including in the name of each account the phrase "Federal Funds"; or

(ii)(A) Notifying the bank or investment company of the accounts that contain title IV, HEA program funds and retaining a record of that notice; and

(B) Except for a public institution, filing with the appropriate State or municipal government entity a UCC-1 statement disclosing that the account contains Federal funds and maintaining a copy of that statement.

(b) *Separate bank account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate bank or investment account that contains no other funds if the Secretary determines that the institution failed to comply with--

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) *Interest-bearing or investment account.* (1) An institution must maintain the Fund described in Sec. 674.8(a) of the Federal Perkins Loan Program regulations in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. Interest or income earned on Fund proceeds are retained by the institution as part of the Fund.

(2) Except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

(3) An institution does not have to maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if--

(i) The institution drew down less than a total of $3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;

(ii) The institution demonstrates by its cash management practices that it will not earn over $250 on those funds during the award year; or

(iii) The institution requests those funds from the Secretary under the just-in-time payment method.

(4) If an institution maintains Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing or investment account, the institution may keep the initial $250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over $250.

(d) *Accounting and internal control systems and financial records.* (1) An institution must maintain accounting and internal control systems that--

(i) Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and

(ii) Identify the earnings on title IV, HEA program funds maintained in the institution's bank or investment account.

(2) An institution must maintain its financial records in accordance with the provisions under Sec. 668.24.

(e) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

(Authority: 20 U.S.C. 1094)

Sec. 668.164 Disbursing funds.

(a) *Disbursement.* (1) Except as provided in paragraph (a)(2) of this section, an institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student's account at the institution or pays a student or parent directly with--

(i) Funds received from the Secretary;

(ii) Funds received from a lender under the FFEL Programs; or

(iii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2) If, earlier than 10 days before the first day of classes of a payment period, or for a student subject to the requirements of Sec. 682.604(c)(5) or Sec. 685.303(b)(4) earlier than 30 days after the first day of the payment period, an institution credits a student's institutional account with institutional funds in advance of receiving title IV, HEA program funds, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes, or the 30th day after the beginning of the payment period for a student subject to the requirements of Sec. 682.604(c)(5) or Sec. 685.303(b)(4).

(b) *Disbursements by payment period.* (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

(2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.

(3) For a student enrolled in an eligible program at an institution that measures academic progress in clock hours, in determining whether the student completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence if--

(i) The institution has a written policy that permits excused absences; and

(ii) The number of excused absences under the written policy for purposes of this paragraph does not exceed the lesser of--

(A) The policy on excused absences of the institution's accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR part 600.11(b);

(B) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or

(C) Ten percent of the clock hours in the payment period.

(4) For purposes of paragraph (b)(3) of this section, an "excused absence" is an absence that a student does not have to make up.

(c) *Direct payments.* An institution pays a student or parent directly by--

(1) Releasing to the student or parent a check provided by a lender to the institution under an FFEL Program;

(2) Issuing a check or other instrument payable to and requiring the endorsement or certification of the student or parent. An institution issues a check by--

(i) Releasing or mailing the check to a student or parent; or

(ii) Notifying the student or parent that the check is available for immediate pickup;

(3) Initiating an electronic funds transfer (EFT) to a bank account designated by the student or parent; or

(4) Dispensing cash for which an institution obtains a signed receipt from the student or parent.

(d) *Crediting a student's account at the institution.*

(1) Without obtaining the student's or parent's authorization under Sec. 668.165, an institution may use title

IV, HEA program funds to credit a student's account at the institution to satisfy current charges for--

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Room, if the student contracts with the institution for room.

(2) After obtaining the appropriate authorization from a student or parent under Sec. 668.165, the institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy--

(i) Current charges that are in addition to the charges described in paragraph (d)(1) of this section that were incurred by the student at the institution for educationally related activities; and

(ii) Minor prior award year charges if these charges are less than $100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs.

(3) If an institution disburses Direct Loan Program funds by crediting a student's account at the institution, the institution must first credit the student's account with those funds to pay for outstanding current and authorized charges.

(4) For purposes of this paragraph, current charges refers to charges assessed the student by the institution for--

(i) The current award year; or

(ii) The loan period for which an institution certified or originated a loan under the FFEL or Direct Loan programs.

(e) *Credit balances.* Whenever an institution disburses title IV, HEA program funds by crediting a student's account and the total amount of all title IV, HEA program funds credited exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but--

(1) No later than 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(2) No later than 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(f) *Early disbursements.* Except as provided under paragraph (f)(3) of this section--

(1) If a student is enrolled in a credit-hour educational program that is offered in semester, trimester, or quarter academic terms, the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is 10 days before the first day of classes for a payment period.

(2) If a student is enrolled in a credit-hour educational program that is not offered in semester, trimester, or quarter academic terms, or in a clock hour educational program the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is the later of--

(i) Ten days before the first day of classes of the payment period; or

(ii) The date the student completed the previous payment period for which he or she received title IV, HEA program funds, except that this provision does not apply to the payment of Direct Loan or FFEL program funds under the conditions described in 34 CFR 685.301 (b)(3)(ii), (b)(5), and (b)(6) and 34 CFR 682.604 (c)(6)(ii), (c)(7), and (c)(8), respectively.

(3) The earliest an institution may disburse the initial installment of a loan under the Direct Loan or FFEL programs to a first-year, first-time borrower as described in 34 CFR 682.604(c) and 34 CFR 685.303(b)(4) is 30 days after the first day of the student's program of study.

(g) *Late disbursements*--(1) Ineligible students who may receive a late disbursement. An institution may make a late disbursement under paragraph (g)(2) of this section, if the student became ineligible solely because--

(i) For purposes of the Direct Loan and FFEL programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; and

(ii) For purposes of the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) Conditions for late disbursements. An institution may disburse funds under a title IV, HEA program to an ineligible student and to the parent of an ineligible student as described in paragraph (g)(1) of this section if, before the date the student became ineligible--

(i) The institution received a SAR from the student or an ISIR from the Secretary and the SAR or ISIR has an official expected family contribution calculated by the Secretary; and (ii)(A) For a Direct Loan Program loan, the institution created the electronic origination record for that loan. An institution may not make a late second or subsequent disbursement of a Direct Subsidized or Direct Unsubsidized loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(B) For an FFEL Program loan, the institution certified an application for that loan. An institution may not make a late second or subsequent disbursement of a Stafford loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(C) For a Direct Loan or FFEL Program loan, the student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in 34 CFR 682.604(c)(5) or 685.303(b)(4);

(D) For a Federal Pell Grant Program award, the institution received a valid SAR from the student or a valid ISIR from the Secretary; and

(E) For a Federal Perkins Loan Program loan or an FSEOG Program award, the student was awarded a loan or grant.

(3) Making a late disbursement. If a student or a parent borrower qualifies for a late disbursement under paragraphs (g) (2) and (3) of this section, the institution--

(i) May make that late disbursement of title IV, HEA program funds only if the funds are used to pay for educational costs that the institution determines the student incurred for the period in which the student was enrolled and eligible; and

(ii) Must make the late disbursement no later than 90 days after the date that student becomes ineligible under paragraph (g)(1) of this section.

(Authority: 20 U.S.C. 1094)

Sec. 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan or FFEL Program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) If an institution credits a student's account at the institution with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the institution must notify the student, or parent of--

(i) The date and amount of the disbursement;

(ii) The student's right, or parent's right to cancel all or a portion of that loan or loan disbursement and have the loan proceeds returned to the holder of that loan. However, the institution does not have to provide this information with regard to FFEL Program funds unless the institution received the loan funds from a lender through an EFT payment or master check; and

(iii) The procedures and the time by which the student or parent must notify the institution that he or she wishes to cancel the loan or loan disbursement.

(3) The institution must send the notice described in paragraph (a)(2) of this section--

(i) No earlier than 30 days before and no later than 30 days after crediting the student's account at the institution, and

(ii) Either in writing or electronically. If the institution sends the notice electronically, it must require the recipient of the notice to confirm receipt of the notice and must maintain a copy of that confirmation.

(4) (i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan or loan disbursement.

(ii) The institution must return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations if the institution receives a loan cancellation request either--

(A) Within 14 days after the date the institution sends the notice described in paragraph (a)(2) of this section; or

(B) If the institution sends the notice described in paragraph (a)(2) of this section more than 14 days prior to the first day of the payment period, by the first day of the payment period.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations.

(5) An institution must inform a student or parent in writing or electronically regarding the outcome of any cancellation request.

(b) *Student or parent authorizations.* (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may--

(i) Disburse title IV, HEA program funds to a bank account designated by the student or parent;

(ii) Use the student's or parent's title IV, HEA program funds to pay for charges described in Sec. 668.164(d)(2) that are included in that authorization; and

(iii) Except if prohibited by the Secretary under the reimbursement method, hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent under Sec. 668.164(e).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution--

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under Sec. 668.164(d)(2), the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(iii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(iii) of this section, the institution must--

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

(Authority: 20 U.S.C. 1094)

Sec. 668.166 Excess cash.

(a) *General.* (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, that an institution does not disburse to students or parents by the end of the third business day following the date the institution received those funds from the Secretary. Except as provided in paragraph (b) of this section, an institution must return promptly to the Secretary any amount of excess cash in its account or accounts.

(2) The provisions in this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

(b) *Excess cash tolerances.* (1) If an institution draws down title IV, HEA program funds in excess of its immediate cash needs, the institution may maintain the excess cash balance in the account the institution established under Sec. 668.164 only if--

(i) In the award year preceding that drawdown, the amount of that excess cash balance is less than--

(A) For a period of peak enrollment at the institution during which that drawdown occurs, three percent of its total prior-year drawdowns; or

(B) For any other period, one percent of its total prior-year drawdowns; and

(ii) Within the next seven days, the institution eliminates its excess cash balance by disbursing title IV, HEA program funds to students or parents for at least the amount of that balance.

(2) For the purposes of this section, a period of peak enrollment at an institution occurs when at least 25 percent of the institution's students start classes during a given 30-day period. For any award year, an institution calculates the percentage of students who started classes during a given 30-day period by--

(i) For the prior award year in which the 30-day period began, determining the number of students who started classes during that period;

(ii) Determining the total number of students who started classes during the entire award year used in paragraph (b)(2)(i) of this section;

(iii) Dividing the number of students in paragraph (b)(2)(i) of this section by the number of students in paragraph (b)(2)(ii) of this section; and

(iv) Multiplying the result obtained in paragraph (b)(2)(iii) of this section by 100.

(3) For the purpose of determining the total amount of title IV, HEA program funds under paragraph (b)(1)(i) of this section, an institution that participates in the Direct Loan Program may include, for the latest year for which the Secretary has complete data, the total amount of loans guaranteed under the FFEL Program for students attending the institution during that year.

(c) *Consequences for maintaining excess cash balances.* (1) If the Secretary finds that an institution maintains in its account excess cash balances greater than those allowed under paragraph (b) of this section, the Secretary--

(i) As provided in paragraph (c)(2) of this section, requires the institution to reimburse the Secretary for the costs the Secretary deems to have incurred in making those excess funds available to the institution; and

(ii) May initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in one or more title IV, HEA programs under subpart G of this part.

(2) For the purposes of this section, upon a finding that an institution has maintained excess cash, the Secretary--

(i) Considers the institution to have issued a check on the date that the check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check shortly after the institution wrote the check; and

(ii) Calculates, or requires the institution to calculate, a liability for maintaining excess cash balances in accordance with procedures established by the Secretary. Under those procedures, the Secretary assesses a liability that is equal to the difference between the earnings that the excess cash balances would have yielded if invested under the applicable current value of funds rate and the actual interest earned on those balances. The current value of funds rate is an annual percentage rate, published in a Treasury Financial Manual (TFM) bulletin, that reflects the current value of funds to the Department of Treasury based on certain investment rates. The current value of funds rate is computed each year by averaging investment rates for the 12-month period ending every September. The TFM bulletin is published annually by the Department of Treasury. Each annual bulletin identifies the current value of funds rate and the effective date of that rate.

(Authority: 20 U.S.C. 1094)

Sec. 668.167 FFEL Program funds.

(a) *Requesting FFEL Program funds.* In certifying a loan application for a borrower under Sec. 682.603--

(1) An institution may not request a lender to provide it with loan funds by EFT or master check earlier than--

(i) Twenty-seven days after the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in Sec. 682.604(c)(5); or

(ii) Thirteen days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford Loan Program borrowers; and

(2) An institution may not request a lender to provide it with loan funds by check requiring the endorsement of the borrower earlier than--

(i) The first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in Sec. 682.604(c)(5); or

(ii) Thirty days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford borrowers; and

(3) (i) An institution may not request a lender to provide it with loan funds by EFT or master check for any Federal PLUS Program loan earlier than provided in paragraph (a)(1) of this section.

(ii) An institution may not request a lender to provide loan funds by check requiring the endorsement of the borrower for any Federal PLUS Program loan earlier than provided in paragraph (a)(2) of this section.

(b) *Returning funds to a lender.* (1) Except as provided in paragraph (c) of this section, an institution must return FFEL Program funds to a lender if the institution does not disburse those funds to a student or parent for a payment period within--

(i) Ten business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT or master check on or after July 1, 1997 but before July 1, 1999;

(ii) Three business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT and master check on or after July 1, 1999; or

(iii) Thirty days after the institution receives the funds if a lender provides those funds by a check payable to the borrower or copayable to the borrower and the institution.

(2) If the institution does not disburse the loan funds as specified in paragraph (b)(1) or (c) of this section, the institution must return those funds to the lender promptly but no later than 10 business days after the date the institution is required to disburse the funds.

(3) If an institution must return loan funds to the lender under paragraph (b)(2) of this section and the institution determines that the student is eligible to receive the loan funds, the school may disburse the funds to the student or parent rather than return them to the lender provided the funds are disbursed prior to the end of the applicable timeframe under paragraph (b)(2) of this section.

(c) *Delay in returning funds to a lender.* An institution may delay returning FFEL program funds to a lender for--

(1) Ten business days after the date set forth in paragraph (b)(1) of this section if--

(i)(A) The institution does not disburse FFEL Program funds to a borrower because the student did not complete the required number of clock or credit hours in a preceding payment period; and

(B) The institution expects the student to complete required hours within this 10-day period; or

(ii)(A) The student has not met all the FFEL Programs eligibility requirements; and

(B) The institution expects the student to meet those requirements within this 10-day period; or

(2) Thirty days after the date set forth in paragraph (b) of this section for funds a lender provides by EFT or master check if the Secretary places the institution on the reimbursement payment method under paragraph (d) or (e) of this section.

(d) *An institution placed under the reimbursement payment method.* (1) If the Secretary places an institution under the reimbursement payment method for the Federal Pell Grant, Direct Loan or campus-based programs, the institution--

(i) May not disburse FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement for that borrower; and

(ii) If prohibited by the Secretary, may not certify a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

(2) In order for the Secretary to approve a disbursement or certification request from the institution, the institution must submit documentation to the Secretary or entity approved by the Secretary that shows that each borrower included in that request whose loan has not been disbursed or certified is eligible to receive that disbursement or certification.

(3) Pending the Secretary's approval of a disbursement or certification request, the Secretary may--

(i) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check the institution receives from a lender;

(ii) Require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that meets the requirements under Sec. 668.164; and

(iii) Prohibit the institution from certifying a borrower's loan application.

(e) *An institution participating solely in the FFEL Programs.* If the FFEL Programs are the only title IV, HEA programs in which an institution participates and the Secretary determines that there is a need to monitor strictly the institution's participation in those programs, the Secretary may subject the institution to the conditions and limitations contained in paragraph (d) of this section.

(f) *An institution placed under the cash monitoring payment method.* The Secretary may require an institution that is placed under the cash monitoring described under paragraph Sec. 668.162(e), to comply with the disbursement and certification provisions under paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the institution's disbursement or certification request.

(Authority: 20 U.S.C. 1094)

(f) added November 25, 1997, effective July 1, 1998.

Subpart L--Financial Responsibility

Note: Subpart added November 25, 1997, effective July 1, 1998.

Sec. 668.171 General.

(a) *Purpose.* To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to--

(1) Provide the services described in its official publications and statements;

(2) Administer properly the title IV, HEA programs in which it participates; and

(3) Meet all of its financial obligations.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that--

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under Sec. 668.172 and Appendices F and G;

(2) The institution has sufficient cash reserves to make required refunds, as provided under Sec. 668.173;

(3) The institution is current in its debt payments. An institution is not current in its debt payments if--

(i) It is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or

(ii) It fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations; and

(4) The institution is meeting all of its financial obligations, including but not limited to--

(i) Refunds that it is required to make under Sec. 668.22; and

(ii) Repayments to the Secretary for debts and liabilities arising from the institution's participation in the title IV, HEA programs.

(c) *Public institutions.* The Secretary considers a public institution to be financially responsible if the institution--

(1)(i) Notifies the Secretary that it is designated as a public institution by the State, local or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(2) Is not in violation of any past performance requirement under Sec. 668.174.

(d) *Audit opinions and past performance provisions.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if--

(1) In the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless the Secretary determines that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition; or

(2) As provided under the past performance provisions in Sec. 668.174(a) and (b)(1), the institution violated a title IV, HEA program requirement, or the persons or entities affiliated with the institution owe a liability for a violation of a title IV, HEA program requirement.

(e) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in Sec. 668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under Sec. 668.23, the Secretary may--

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in Sec. 668.13(d).

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

Sec. 668.172 Financial ratios.

(a) *Appendices F and G, ratio methodology.* As provided under Appendices F and G to this part, the Secretary determines an institution's composite score by--

(1) Calculating the result of its Primary Reserve, Equity, and Net Income ratios, as described under paragraph (b) of this section;

(2) Calculating the strength factor score for each of those ratios by using the corresponding algorithm;

(3) Calculating the weighted score for each ratio by multiplying the strength factor score by its corresponding weighting percentage;

(4) Summing the resulting weighted scores to arrive at the composite score; and

(5) Rounding the composite score to one digit after the decimal point.

(b) *Ratios.* The Primary Reserve, Equity, and Net Income ratios are defined under Appendix F for proprietary institutions, and under Appendix G for private non-profit institutions.

(1) The ratios for proprietary institutions are:

For proprietary institutions:

$$\text{Primary Reserve ratio} = \frac{\text{Adjusted Equity}}{\text{Total Expenses}}$$

$$\text{Equity ratio} = \frac{\text{Modified Equity}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Income Before Taxes}}{\text{Total Revenues}}$$

(2) The ratios for private non-profit institutions are:

$$\text{Primary Reserve ratio} = \frac{\text{Expendable Net Assets}}{\text{Total Expenses}}$$

$$\text{Equity ratio} = \frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenues}}$$

(c) *Excluded items.* In calculating an institution's ratios, the Secretary--

(1) Generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates;

(2) May include or exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs;

(3) Excludes all unsecured or uncollateralized related-party receivables;

(4) Excludes all intangible assets defined as intangible in accordance with generally accepted accounting principles; and

(5) Excludes from the ratio calculations Federal funds provided to an institution by the Secretary under program authorized by the HEA only if--

(i) In the notes to the institution's audited financial statement, or as a separate attestation, the auditor discloses by name and CFDA number, the amount of HEA program funds reported as expenses in the Statement of Activities for the fiscal year covered by that audit or attestation; and

(ii) The institution's composite score, as determined by the Secretary, is less than 1.5 before the reported expenses arising from those HEA funds are excluded from the Primary Reserve ratio.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

Sec. 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves (as required under Sec. 668.171(b)(2)) to make any refunds required under Sec. 668.22 if the institution--

(1) Satisfies the requirements of a public institution under Sec. 668.171(c)(1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Demonstrates that it makes its refunds timely, as provided under paragraph (b) of this section.

(b) *Timely refunds*. An institution demonstrates that it makes required refunds within the time permitted under Sec. 668.22 if the auditor(s) who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years--

(1) Did not find in the sample of student records audited or reviewed for either of those fiscal years that--

(i) The institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund under Sec. 668.22; or

(ii) The institution made only one late refund to a student in that sample; and

(2) Did not note for either of those fiscal years a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

(c) *Refund findings*. Upon a finding that an institution no longer satisfies a refund standard under paragraph (a)(1) or (2) of this section, or that the institution is not making its refunds timely under paragraph (b) of this section, the institution must submit an irrevocable letter of credit, acceptable and payable to the Secretary, equal to 25 percent of the total amount of title IV, HEA program refunds the institution made or should have made during its most recently completed fiscal year. The institution must submit this letter of credit to the Secretary no later than--

(1) Thirty days after the date the institution is required to submit its compliance audit to the Secretary under Sec. 668.23, if the finding is made by the auditor who conducted that compliance audit; or

(2) Thirty days after the date that the Secretary, or the State or guaranty agency that conducted a review of the institution notifies the institution of the finding. The institution must also notify the Secretary of that finding and of the State or guaranty agency that conducted that review of the institution.

(d) *State tuition recovery funds*. In determining whether to approve a State's tuition recovery fund, the Secretary considers the extent to which that fund--

(1) Provides refunds to both in-State and out-of-State students;

(2) Allocates all refunds in accordance with the order required under Sec. 668.22; and

(3) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the fund's assets.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

Sec. 668.174 Past performance.

(a) *Past performance of an institution*. An institution is not financially responsible if the institution--

(1) Has been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency, as defined in 34 CFR part 682, within the preceding five years;

(2) In either of its two most recent compliance audits had an audit finding, or in a report issued by the Secretary had a program review finding for its current fiscal year or either of its preceding two fiscal years, that resulted in the institution's being required to repay an amount greater than 5 percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

(3) Has been cited during the preceding five years for failure to submit in a timely fashion acceptable compliance and financial statement audits required under this part, or acceptable audit reports required under the individual title IV, HEA program regulations; or

(4) Has failed to resolve satisfactorily any compliance problems identified in audit or program review reports based upon a final decision of the Secretary issued pursuant to subpart G or H of this part.

(b) *Past performance of persons affiliated with an institution*. (1)(i) Except as provided under paragraph (b)(2) of this section, an institution is not financially responsible if a person who exercises substantial control over the institution, as described under 34 CFR 600.30, or any member or members of that person's family, alone or together--

(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a title IV, HEA program requirement; or

(B) Owes a liability for a violation of a title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary.

(2) The Secretary may determine that an institution is financially responsible, even if the institution is not otherwise financially responsible under paragraph (b)(1) of this section, if--

(i) The institution notifies the Secretary, within the time permitted and in the manner provided under 34 CFR 600.30, that the person referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

(ii) The person referenced in paragraph (b)(1) of this section repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of--

(A) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(B) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(C) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

(iii) The applicable liability described in paragraph (b)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(iv) The institution demonstrates to the satisfaction of the Secretary why--

(A) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(B) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(c) *Ownership interest.* (1) An ownership interest is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, an institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation. The term "ownership interest" includes, but is not limited to--

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term "ownership interest" does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of a profit-sharing plan, provided that all employees are covered by the plan.

(3) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer if the person--

(i) Directly or indirectly holds at least a 20 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 20 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 20 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, the chief executive officer, or other executive officer of--

(A) The institution or servicer; or

(B) An entity that holds at least a 20 percent ownership interest in the institution or servicer.

(4) The Secretary considers a member of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

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Sec. 668.175 Alternative standards and requirements.

(a) *General.* An institution that is not financially responsible under the general standards and provisions in Sec. 668.171, may begin or continue to participate in the title IV, HEA programs by qualifying under an alternate standard set forth in this section.

(b) *Letter of credit alternative for new institutions.* A new institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount equal to at least one-half of the amount of title IV, HEA program funds that the Secretary determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.

(c) *Letter of credit alternative for participating institutions.* A participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under Sec. 668.171(b), or because of an audit opinion described under Sec. 668.171(d), qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

(d) *Zone alternative.* (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative.

(i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary.

(2) Under this zone alternative, the Secretary--

(i) Requires the institution to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method described in Sec. 668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events--

(A) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;

(B) Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;

(C) Any violation by the institution of any loan agreement;

(D) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;

(E) Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or

(F) Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under Sec. 668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must--

(i) For any oversight or financial event described under paragraph (d)(2)(ii) of this section for which the institution is required to provide information, provide that information to the Secretary by certified mail or electronic or facsimile transmission no later than 10 days after that event occurs. An institution that provides this information electronically or by facsimile transmission is responsible for confirming that the Secretary received a complete and legible copy of that transmission; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraphs (d)(2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) *Transition year alternative.* A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 for the institution's fiscal year that began on or after July 1, 1997 but on or before June 30, 1998, may qualify as a financially responsible institution under the provisions in Sec. 668.15(b)(7), (b)(8), (d)(2)(ii), or (d)(3), as applicable.

(f) *Provisional certification alternative.* (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if--

(i) The institution is not financially responsible because it does not satisfy the general standards under Sec. 668.171(b) or because of an audit opinion described under Sec. 668.171(d); or

(ii) The institution is not financially responsible because of a condition of past performance, as provided under Sec. 668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition.

(2) Under this alternative, the institution must--

(i) Submit to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year;

(ii) Demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under Sec. 668.171(b)(3) and (b)(4), for its two most recent fiscal years; and

(iii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section.

(3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary may again permit the institution to participate under a provisional certification, but the Secretary--

(i) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under Sec. 668.174(d), or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(ii) May require one or more of the persons or entities that exercise substantial control over the institution, as determined under Sec. 668.174(d), to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.

(g) *Provisional certification alternative for persons or entities owing liabilities.* (1) The Secretary may permit an institution that is not financially responsible because the persons or entities that exercise substantial control over the institution owe a liability for a violation of a title IV, HEA program requirement, to participate in the title IV, HEA programs under a provisional certification only if--

(i)(A) The persons or entities that exercise substantial control, as determined under Sec. 668.174(d), repay or enter into an agreement with the Secretary to repay the applicable portion of that liability, as provided under Sec. 668.174(c)(2)(ii); or

(B) The institution assumes that liability, and repays or enters into an agreement with the Secretary to repay that liability;

(ii) The institution satisfies the general standards and provisions of financial responsibility under Sec. 668.171 (b) and (d), except that institution must demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under Sec. 668.171(b)(3) and (b)(4), for its two most recent fiscal years; and

(iii) The institution submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

(2) Under this alternative, the Secretary--

(i) Requires the institution to comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section;

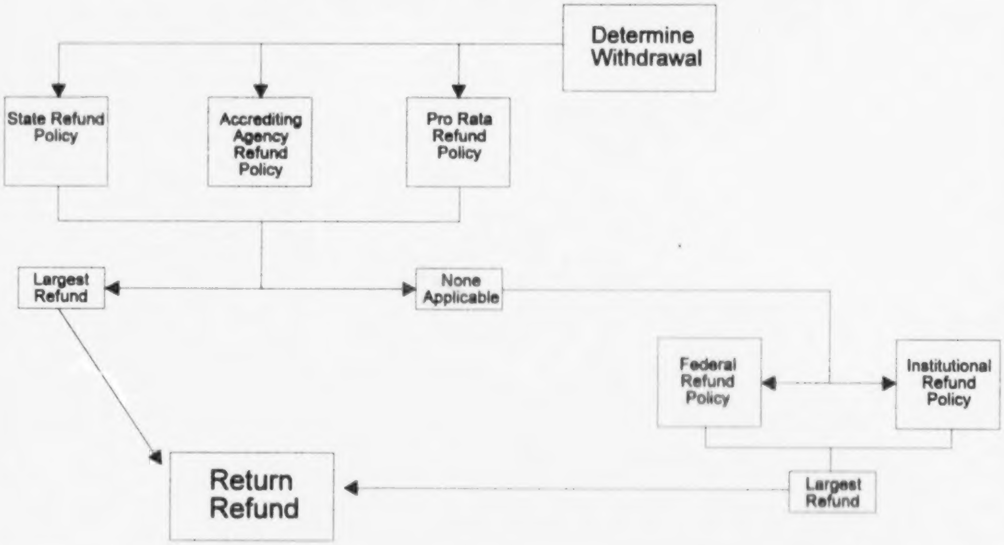
(ii) May require the institution, or one or more persons or entities that exercise substantial control over the institution, or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(iii) May require one or more of the persons or entities that exercise substantial control over the institution to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.

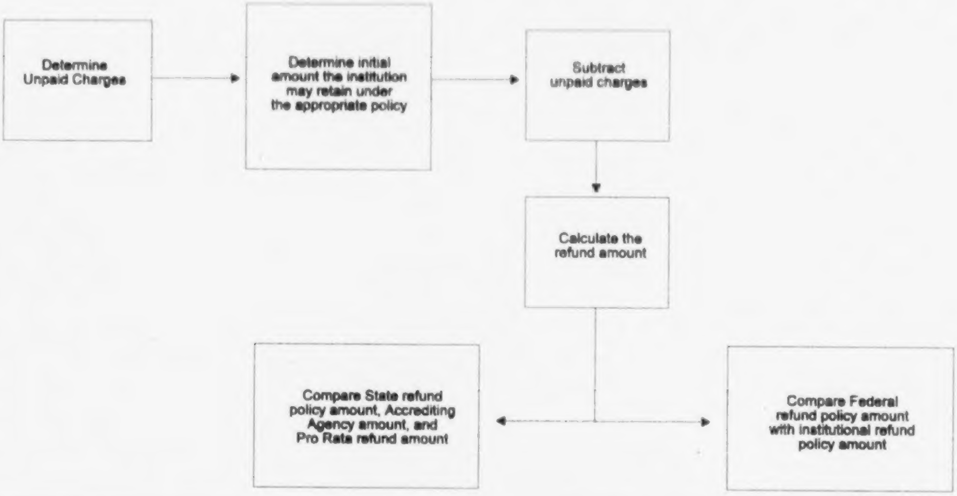
(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

Appendix A -- Flow Charts for Procedures for Calculating Refunds Under Sec. 668.22

The Refund Process


Determine Withdrawal
State Refund Policy
Accrediting Agency Refund Policy
Pro Rata Refund Policy
Largest Refund
None Applicable
Federal Refund Policy
Institutional Refund Policy
Largest Refund
Return Refund

Refunds under State, Accrediting Agency, Federal Refund and Institutional Policies


Determine Unpaid Charges
Determine initial amount the institution may retain under the appropriate policy
Subtract unpaid charges
Calculate the refund amount
Compare State refund policy amount, Accrediting Agency amount, and Pro Rata refund amount
Compare Federal refund policy amount with institutional refund policy amount

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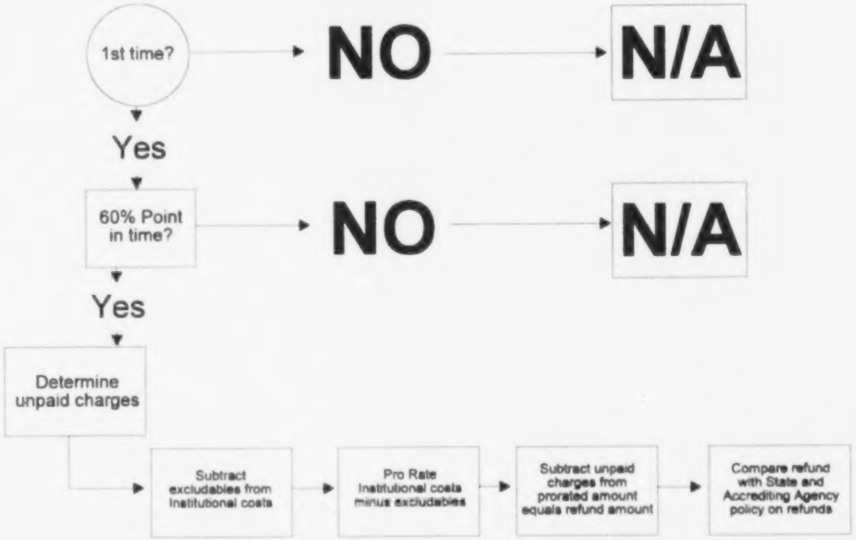
Pro Rata Refund



1st time?

NO

N/A

Yes

60% Point in time?

NO

N/A

Yes

Determine unpaid charges

Subtract excludables from Institutional costs

Pro Rate Institutional costs minus excludables

Subtract unpaid charges from prorated amount equals refund amount

Compare refund with State and Accrediting Agency policy on refunds

Appendix B--Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Part III Chapter 3--Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.[1]

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor's ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. These circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.

2. Preconceived ideas about the objective or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.

3. Previous involvement in a decisionmaking or management capacity in the operations of the governmental entity or program being audited.

4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.

5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.

6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or impinge on the auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.[2]

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.

2. Interference with the selection or application of audit procedures or the selection of activities to be examined.

3. Denial of access to such sources of information as books, records, and supporting documents or denial of opportunity to obtain explanations by officials and employees of the governmental organizations, program, or activity under audit.

4. Interference in the assignment of personnel to the audit task.

5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.

6. Activity to overrule or significantly influence the auditor's judgment as to the appropriate content of the audit report.

7. Influences that place the auditor's continued employment in jeopardy for reasons other than competency or the need for audit services.

8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

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[1] If the auditor is not fully independent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA "Statements on Auditing Procedure."

[2] Some of these situations may constitute justifiable limitations on the scope of the work. In such cases the limitation should be identified in the auditor's report.

Organizational Impairments

(a) The auditor's independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management function of the entity under audit.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

Appendix C--Appendix I, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

"Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; Provided, That if the Secretary deems it necessary in the public interest, he may prescribe by regulations higher standards than those required for the practice of public accountancy by the regulatory authorities of the States."[3]

(b) The standards for examination and evaluation require consideration of applicable laws and regulations in the auditor's examination. The standards for reporting require a statement in the auditor's report regarding any significant instances of noncompliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of noncompliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural noncompliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis--that only noncompliance need be reported--it should be recognized that governmental entities often want positive statements regarding whether or not the auditor's tests disclosed instances of noncompliance. This is particularly true in grant programs where authorizing agencies frequently want assurance in the auditor's report that this matter has been considered. For such audits, auditors should obtain an understanding with the authorizing agency as to the extent to which such positive comments on compliance are desired. When coordinated audits are involved, the audit program should specify the extent of comments that the auditor is to make regarding compliance.

(d) When noncompliance is reported, the auditor should place the findings in proper perspective. The extent of instances of noncompliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of noncompliance.

Appendix D--Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the Federal Stafford Loan and Federal SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under 668.17 may avoid that sanction by demonstrating that the institution has implemented the measures included in this appendix. Other institutions should strongly consider taking these steps as well.

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[3] Letter (B-148144, September 15, 1970) from the Comptroller General to the heads of Federal departments and agencies. The reference to "Secretary" means the head of the department or agency.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.

3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.

5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.

6. Implement a pro rata refund policy, as defined in 34 CFR 682.606(b)(2) and (c).

7. Delay certification of a first-time borrower's loan application, as described in 34 CFR 682.603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.

2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers' Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested."

2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to--

(i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested"; and

(ii) Update the institution's records regarding the borrower's address, telephone number, employer, and employer's address.

3. At the time of a borrower's admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.

4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Stafford Loan or SLS loan made to the borrower for enrollment at the institution.

5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F:

(a) As part of the initial loan counseling provided to a Stafford Loan or SLS borrower--

(1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of Stafford and SLS loans, including--

(i) The stated interest rate on the borrower's loans;

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(ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;

(iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and

(iv) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the lender or guarantee agency to collect the loan, including attorney's fees;

(2) Explain the borrower's rights and responsibilities in the Stafford Loan and SLS programs including--

(i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

(iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and

(iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;

(3) Provide to the borrower--

(i)(A) General information on the average indebtedness of student borrowers who have obtained Stafford Loan or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or

(B) The estimated balance owed by the borrower on Stafford Loan and SLS loans, and the average amount of a required monthly payment based on that balance; and

(ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.

(4) Review the repayment options (e.g., loan consolidation, refinancing) available to the borrower;

(5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and

(6) Provide general information on budgeting of living expenses and other aspects of personal financial management.

(b) As part of the exit counseling provided to a Stafford Loan or SLS borrower--

(1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;

(2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

(3) Provide the name and address of the borrower's lender(s) according to the institution's records;

(4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and

(c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.

6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV. General

1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

Note: Introductory paragraphs amended April 29, 1994, effective July 1, 1994.

Appendix E--Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

Note: Appendix added April 29, 1994, effective July 1, 1994.

The following definitions are to be used for reporting the crimes listed in 668.47, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for *murder, robbery, aggravated assault, burglary, motor vehicle theft, weapon law violations, drug abuse violations,* and *liquor law violations* are excerpted from the *Uniform Crime Reporting Handbook*. The definitions of forcible and nonforcible sex offenses are excerpted from the National Incident-Based Reporting System Edition of the *Uniform Crime Reporting Handbook*.

252

Crime Definitions From the Uniform Crime Reporting Handbook

Murder

The willful (nonnegligent) killing of one human being by another.

Robbery

The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Aggravated Assault

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

Burglary

The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

Motor Vehicle Theft

The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned-including joyriding.)

Weapon Law Violations

The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.

Drug Abuse Violations

Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (demerol, methadones); and dangerous nonnarcotic drugs (barbiturates, benzedrine).

Liquor Law Violations

The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)

Sex Offenses Definitions From the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Program

Sex Offenses--Forcible

Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

A. *Forcible Rape*--The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

B. *Forcible Sodomy*--Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

C. *Sexual Assault With An Object*--The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

D. *Forcible Fondling*--The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

Sex Offenses--Nonforcible

Unlawful, nonforcible sexual intercourse.

A. *Incest*--Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

B. *Statutory Rape*--Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Appendix F--Ratio Methodology for Proprietary Institutions

Note: Appendix added November 25, 1997, effective July 1, 1998

Section 1: Ratios and Ratio Terms

$$\text{Primary Reserve Ratio} = \frac{\text{Adjusted Equity}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Equity}}{\text{Modified Assets}}$$

$$\text{Net Income Ratio} = \frac{\text{Income Before Taxes}}{\text{Total Revenues}}$$

Definitions:

Adjusted Equity = (total owner's equity) - (intangible assets) - (unsecured related-party receivables) - (net property, plant and equipment)* + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)**

Total Expenses excludes income tax, discontinued operations, extraordinary losses, or change in accounting principle.

Modified Equity = (total owner's equity) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Income Before Taxes is taken directly from the audited financial statement

Total Pre-Tax Revenues = (total operating revenues) + (non-operating revenue and gains). Investment gains should be recorded net of investment losses. No revenues shown after income taxes (e.g., discontinued operations, extraordinary gains, or change in accounting principle) on the income statement should be included.

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* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.

** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.

Section 2, Calculating the Ratios from the Balance Sheet and Income Statement

Balance Sheet

Line		
1	Cash	$ 190,000
2	Accounts Receivable	1,010,000
3	Prepaid Expenses	150,000
4	Inventories	130,000
5	Note Receivable from Affiliate	200,000
6	Investments	330,000
7	**Total Current Assets**	2,010,000
8	Property and Equipment, net	500,000
9	Amount Due from Owner	170,000
10	Goodwill	80,000
11	Organization Costs	70,000
12	Deposits	60,000
13	**Total Assets**	2,890,000
14	Accounts Payable	200,000
15	Accrued Expenses	330,000
16	Current Portion of Long-Term Debt	120,000
17	Deferred Revenue	650,000
18	**Total Current Liabilities**	1,300,000
19	Long-Term Debt, net of Current Portion	330,000
20	**Total Liabilities**	1,630,000
21	Contributed Capital	440,000
22	Retained Earnings	820,000
23	**Total Owner's Equity**	1,260,000
24	**Total Liabilities and Owner's Equity**	2,890,000

Statement of Income and Retained Earnings

Line		
25	Operating Income	$ 9,700,000
26	Non-Operating Income	300,000
27	**Total Income**	10,000,000
28	Cost of Goods Sold	6,800,000
29	Administrative Expenses	2,600,000
30	Depreciation Expense	60,000
31	Interest Expense	40,000
32	**Total Expenses**	9,500,000
33	Other: Gain on Sale of Investments	10,000
34	**Net Income Before Taxes**	510,000
35	Federal Income Taxes	153,000
36	**Net Income After Taxes**	357,000
37	Extraordinary Loss, net of Tax	800,000
38	**Net Income**	(443,000)
39	Retained Earnings, Beginning of year	1,263,000
22	**Retained Earnings, end of year**	820,000

$$\text{Primary Reserve Ratio} = (\text{lines})\ \frac{23\text{-}5\text{-}9\text{-}10\text{-}8+(16+19)^{*}}{32} = \frac{\$\ 760{,}000}{\$9{,}500{,}000} = 0.080$$

$$\text{Equity Ratio} = (\text{lines})\ \frac{23\text{-}5\text{-}9\text{-}10}{13\text{-}5\text{-}9\text{-}10} = \frac{\$\ 810{,}000}{\$2{,}440{,}000} = 0.332$$

$$\text{Net Income Ratio} = (\text{lines})\ \frac{34}{27+33} = \frac{\$\ 510{,}000}{\$10{,}010{,}000} = 0.051$$

*Long-Term Debt (lines 16+19) cannot exceed Property and Equipment (line 8) in this formula

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Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms:

Example (for Proprietary Institutions)

Primary Reserve strength factor score = 20 x* Primary Reserve ratio result: 20 x 0.080 = 1.600

Equity strength factor score = 6 x Equity ratio result: 6 x 0.332 = 1.992

Net Income strength factor score = 1 + (33.3 x Net Income ratio result): 1 + (33.3 x 0.051) = 2.698

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 30% x Primary Reserve strength factor score: 0.30 x 1.600 = 0.480

Equity weighted score = 40% x Equity strength factor score: 0.40 x 1.992 = 0.797

Net Income weighted score = 30% x Net Income strength factor score: 0.30 x 2.698 = 0.809

Composite score = sum of all weighted scores: 0.480 + 0.797 + 0.809 = 2.086

Round the composite score to one digit after the decimal point to determine the final score: 2.1

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* The symbol "x" denotes multiplication.

Appendix G--Ratio Methodology for Private Non-Profit Institutions

Note: Appendix added November 25, 1997, effective July 1, 1998

Section 1: Ratios and Ratio Terms

$$\text{Primary Reserve Ratio} = \frac{\text{Expendable Net Assets}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

$$\text{Net Income Ratio} = \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenue}}$$

Definitions:

Expendable Net Assets = (unrestricted net assets) + (temporarily restricted net assets) - (annuities, term endowments, and life income funds that are temporarily restricted) - (intangible assets) - (net property, plant and equipment)* + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)**

Total Expenses is total unrestricted expenses taken directly from the audited financial statement

Modified Net Assets = (unrestricted net assets) + (temporarily restricted net assets) + (permanently restricted net assets) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Change in Unrestricted Net Assets is taken directly from the audited financial statement

Total Unrestricted Revenue is taken directly from the audited financial statement (This amount includes net assets released from restriction during the fiscal year)

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* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.

** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.

Section 2, Calculating the Ratios from the Balance Sheet and Statement of Activities

Balance Sheet

Line		
1	Cash and Cash Equivalents	$ 1,000,000
2	Accounts Receivable	6,000,000
3	Prepaid Expenses	1,500,000
4	Inventories	500,000
5	Contributions Receivable	2,000,000
6	Student Loans Receivable	8,000,000
7	Investments	6,000,000
8	Property and Equipment, net	50,000,000
9	Bond Insurance Costs	720,000
10	Goodwill	500,000
11	Deposits	20,000
12	**Total Assets**	76,240,000
13	Line of Credit	$ 500,000
14	Accounts Payable	2,000,000
15	Accrued Expenses	3,500,000
16	Deferred Revenue	650,000
17	Post-Retirement Benefits Liability	6,600,000
18	Bonds Payable	36,000,000
19	**Total Liabilities**	49,250,000
20	**Unrestricted Net Assets**	15,190,000
21	Annuities	300,000
22	John Doe Scholarship Fund	2,500,000
23	**Total Temp. Restricted Net Assets**	2,800,000
24	**Permanent Restr. Net Assets**	9,000,000
25	**Total Net Assets**	26,990,000
26	**Total Liabilities & Net Assets**	76,240,000

Statement of Activities

	column:	a	b	c	d
Line		Unrestricted	Temporarily Restricted	Permanently Restricted	Total
27	Tuition and Fees	$ 45,000,000			$ 45,000,000
28	Contributions	1,200,000	$ 300,000	$ 120,000	1,620,000
29	Auxiliary Enterprises	5,500,000			5,500,000
30	Net Assets Released from Restrictions	200,000			200,000
31	**Total Revenue**	51,900,000	300,000	120,000	52,320,000
32	Operating Expenses	38,000,000			38,000,000
33	Depreciation	5,000,000			5,000,000
34	Interest Expense	2,880,000			2,880,000
35	Auxiliary Enterprises	5,200,000			5,200,000
36	Non-Operating Expenses	900,000			900,000
37	Net Assets Released from Restrictions		200,000	---	200,000
38	**Total Expenses**	51,980,000	200,000	---	52,180,000
39	**Change in Net Assets**	(80,000)*	100,000	120,000	140,000
40	Net Assets at beginning of year	15,270,000	2,700,000	8,880,000	26,850,000
41	Net Assets at end of year	15,190,000	2,800,000	9,000,000	26,990,000

$$\text{Primary Reserve Ratio} = \text{(lines)} \quad \frac{20+23-21-10-8+18^{**}+17}{38a} = \frac{\$\ 9{,}790{,}000}{51{,}980{,}000} = 0.188$$

$$\text{Equity Ratio} = \text{(lines)} \quad \frac{25-10}{12-10} = \frac{\$26{,}490{,}000}{75{,}740{,}000} = 0.350$$

$$\text{Net Income Ratio} = \text{(lines)} \quad \frac{39a}{31a} = \frac{\$\ (80{,}000)}{51{,}900{,}000} = (0.0015)$$

* In accounting statements, parentheses denote negative numbers (i.e., (80,000) equals negative 80,000)

**Long-Term Debt (line 18) cannot exceed Property and Equipment, net (line 8) in this formula.

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Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms

	Example (for Private Non-Profit Institutions)
Primary Reserve strength factor score = 10 x* Primary Reserve ratio result:	10 x 0.188 = 1.880
Equity strength factor score = 6 x Equity ratio result:	6 x 0.350 = 2.100
Because the Net Income ratio result is negative, the algorithm for negative net income is used--Net Income strength factor score = 1 + (25 x Net Income ratio result):	1 + (25 x -0.0015) = 0.963

(Note: If the Net Income ratio result is positive, the following algorithm is used, Net Income strength factor score = 1 + (50 x Net Income ratio result) -- If the Net Income ratio result is 0, the Net Income strength factor score is 1).

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 40% x Primary Reserve strength factor score:	0.40 x 1.880 = 0.752
Equity weighted score = 40% x Equity strength factor score:	0.40 x 2.100 = 0.840
Net Income weighted score = 20% x Net Income strength factor score:	0.20 x 0.963 = 0.193
Composite score = sum of all weighted scores:	.752 + 0.840 + 0.193 = 1.785
Round the composite score to one digit after the decimal point to determine the final score:	1.8

* The symbol "x" denotes multiplication.

PART 673--GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

PART 673--GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Subpart A--Purpose and Scope

Sec.

673.1 Purpose.

673.2 Applicability of regulations.

Subpart B--General Provisions for the Federal Perkins Loan, FWS, and FSEOG programs

673.3 Application.

673.4 Allocation and reallocation.

673.5 Overaward.

673.6 Coordination with BIA grants.

673.7 Administrative cost allowance.

Authority: 20 U.S.C. 421-429, 1070b-1070b-3, and 1087aa-1087ii; 42 U.S.C. 2751-2756b, unless otherwise noted.

Note: Part 673 added November 27, 1996, effective July 1, 1997.

Subpart A--Purpose and Scope

Sec. 673.1 Purpose.

This part governs the following three programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA) that participating institutions administer:

(a) The Federal Perkins Loan Program, which encourages the making of loans by institutions to needy undergraduate and graduate students to help pay for their cost of education.

(b) The Federal Work-Study (FWS) Program, which encourages the part-time employment of undergraduate and graduate students who need the income to help pay for their cost of education and which encourages FWS recipients to participate in community service activities.

(c) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program, which encourages the providing of grants to exceptionally needy undergraduate students to help pay for their cost of education.

(Authority: 20 U.S.C. 421-429, 1070b-1070b-3, and 1087aa-1087ii; 42 U.S.C. 2751-2756b)

Sec. 673.2 Applicability of regulations.

The participating institution is responsible for administering these programs in accordance with the regulations in this part and the applicable program regulations in 34 CFR parts 674, 675, and 676.

(Authority: 20 U.S.C. 421-429, 1070b-1070b-3, and 1087aa-1087ii; 42 U.S.C. 2751-2756b)

Subpart B--General Provisions for the Federal Perkins Loan, FWS, and FSEOG programs

Sec. 673.3 Application.

(a) To participate in the Federal Perkins Loan, FWS, or FSEOG programs, an institution shall file an application before the deadline date established annually by the Secretary through publication of a notice in the **Federal Register**.

(b) The application for the Federal Perkins Loan, FWS, and FSEOG programs must be on a form approved by the Secretary and must contain the information needed by the Secretary to determine the institution's allocation or reallocation of funds under sections 462, 442, and 413D of the HEA, respectively.

(Authority: 20 U.S.C. 1070b-3 and 1087bb; 42 U.S.C. 2752)

Sec. 673.4 Allocation and reallocation.

(a) *Allocation and reallocation of Federal Perkins Loan funds.* (1) The Secretary allocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program in accordance with section 462 of the HEA.

(2) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program by--

(i) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(ii) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan Program.

(b) *Allocation and reallocation of FWS funds.* The Secretary allocates and reallocates funds to institutions participating in the FWS Program in accordance with section 442 of the HEA.

(c) *Allocation and reallocation of FSEOG funds.* (1) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA.

(2) The Secretary reallocates funds to institutions participating in the FSEOG Program in a manner that best carries out the purposes of the FSEOG Program.

(d) *General allocation and reallocation.*--(1) *Categories.* As used in section 462 (Federal Perkins Loan Program), section 442 (FWS Program), and section 413D (FSEOG Program) of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(i) Cosmetology.

(ii) Business.

(iii) Trade/Technical.

(iv) Art Schools.

(v) Other Proprietary Institutions.

(vi) Non-Proprietary Institutions.

(2) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary provides an institution its allocation in accordance with the payment methods described in 34 CFR 668.162.

(3) *Unexpended funds.* (i) If an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the Secretary reduces the institution's allocation for that program for the second succeeding award year by the dollar amount returned.

(ii) The Secretary may waive the provision of paragraph (d)(3)(i) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(iii) The Secretary considers enforcement of paragraph (d)(3)(i) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(e) *Anticipated collections of Federal Perkins Loan funds.*

(1) For the purposes of calculating an institution's share of any excess allocation of Federal Perkins Loan funds, an institution's anticipated collections are equal to the amount that was collected by the institution during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

(f) *Authority to expend FWS funds.* Except as specifically provided in 34 CFR 675.18(b), (c), and (f), an institution may not use funds allocated or reallocated for an award year--

(1) To meet FWS wage obligations incurred with regard to an award of FWS employment made for any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(g) *Authority to expend FSEOG funds.* Except as specifically provided in 34 CFR 668.164(g), an institution shall not use funds allocated or reallocated for an award year--

(1) To make FSEOG disbursements to students in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b-3 and 1087bb, 42 U.S.C. 2752)

Sec. 673.5 Overaward.

(a) *Overaward prohibited.*--(1) Federal Perkins Loan and FSEOG Programs. An institution may only award or disburse a Federal Perkins loan or an FSEOG to a student if that loan or the FSEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) *FWS Program.* An institution may only award FWS employment to a student if the award, combined with the

other resources the student receives, does not exceed the student's financial need.

(b) *Awarding and disbursement.* (1) When awarding and disbursing a Federal Perkins loan or an FSEOG or awarding FWS employment to a student, the institution shall take into account those resources it--

(i) Can reasonably anticipate at the time it awards Federal Perkins Loan funds, an FSEOG, or FWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(2) If a student receives resources at any time during the award period that were not considered in calculating the Federal Perkins Loan amount or the FWS or FSEOG award, and the total resources including the loan, the FSEOG, or the prospective FWS wages exceed the student's need, the overaward is the amount that exceeds need.

(c) *Resources.* (1) Except as provided in paragraph (c)(2) of this section, the Secretary considers that "resources" include, but are not limited to, any--

(i) Funds a student is entitled to receive from a Federal Pell Grant;

(ii) William D. Ford Federal Direct Loans;

(iii) Federal Family Education Loans;

(iv) Long-term loans, including Federal Perkins loans made by the institution;

(v) Grants, including FSEOGs, State grants, and ROTC subsistence allowances;

(vi) Scholarships, including athletic scholarships and ROTC scholarships;

(vii) Waivers of tuition and fees;

(viii) Fellowships or assistantships;

(ix) Veterans benefits;

(x) Net earnings from need-based employment; and

(xi) Insurance programs for the student's education.

(2) The Secretary does not consider as a resource--

(i) Any portion of the resources described in paragraph (c)(1) of this section that are included in the calculation of the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Federal Direct PLUS Loan, a Federal PLUS Loan, a Federal Direct Unsubsidized Stafford/Ford Loan, a Federal Unsubsidized Stafford Loan, or a State-sponsored or private loan as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

(d) *Treatment of resources in excess of need*--General. An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Federal Perkins Loan, FWS, or FSEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $300, no further action is necessary.

(2) If the student's total resources still exceed his or her need by more than $300, as recalculated pursuant to paragraph (d)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) Federal Perkins loan and FSEOG overpayment. If the student's total resources still exceed his or her need by more than $300, after the institution takes the steps required in paragraphs (d)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $300 as an overpayment.

(e) *Termination of FWS employment.* (1) An institution may fund a student's FWS employment with FWS funds only until the amount of the FWS award has been earned or until the student's financial need, as recalculated under paragraph (d)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed $300.

(f) *Liability for and recovery of Federal Perkins loans and FSEOG overpayments.* (1) A student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her.

(2) The institution is also liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part, 34 CFR Part 668, 34 CFR Part 674, or 34 CFR Part 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment if it cannot collect the overpayment from the student.

(3) If an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall help the Secretary recover the overpayment by promptly attempting to recover the overpayment by sending a written notice to the student requesting repayment of the overawarded funds. The notice must state that failure to make that repayment or to make arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment renders the student ineligible for further title IV aid until final resolution of the overpayment.

(4) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

(5) *Referral of FSEOG overpayments.* (i) If the student fails to repay an FSEOG overpayment or make arrangements, satisfactory to the holder of the overpayment debt, to pay the FSEOG overpayment after taking the action required by paragraph (f)(3) and, if applicable, paragraph (f)(4) of this section, and the Federal share of the FSEOG overpayment is $25.00 or more, the institution shall notify the Secretary, identifying the Federal share of the FSEOG overpayment, the student's name, most recent address, telephone number, and any other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts of FSEOG overpayments.

(ii) If an institution fails in its attempt to collect the overpayment and the Federal share of the FSEOG overpayment is less than $25.00, the institution need make no further recovery efforts of the FSEOG overpayment.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1070b-1, 1087dd, and 1087hh, 42 U.S.C. 2753)

Sec. 673.6 Coordination with BIA grants.

(a) *Coordination of BIA grants with Federal Perkins loans, FWS awards, or FSEOGs.* To determine the amount of a Federal Perkins loan, FWS compensation, or an FSEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid--

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements the student aid package specified in paragraph (a) of this section.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted from the other assistance (except for Federal Pell Grants), not from the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Federal Pell Grants. However, the institution may change the sequence if requested to do so by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a student who is also eligible for a BIA education grant, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b-1 and 1087dd; 42 U.S.C. 2753)

Sec. 673.7 Administrative cost allowance.

(a) An institution participating in the Federal Perkins Loan, FWS, or FSEOG programs is entitled to an administrative cost allowance for an award year if it advances funds under the Federal Perkins Loan Program, provides FWS employment, or awards grants under the FSEOG Program to students in that year.

(b) An institution may charge the administrative cost allowance calculated in accordance with paragraph (c) of this section for an award year against-(1) The Federal Perkins Loan Fund, if the institution advances funds under the Federal Perkins Loan Program to students in that award year;

(2) The FWS allocation, if the institution provides FWS employment to students in that award year; and

(3) The FSEOG allocation, if the institution awards grants to students under the FSEOG program in that award year.

(c) For any award year, the amount of the administrative costs allowance equals--

(1) Five percent of the first $2,750,000 of the institution's total expenditures to students in that award year under the FWS, FSEOG, and the Federal Perkins Loan programs; plus

(2) Four percent of its expenditures to students that are greater than $2,750,000 but less than $5,500,000; plus

(3) Three percent of its expenditures to students that are $5,500,000 or more.

(d) The institution shall not include, when calculating the allowance in paragraph (c) of this section, the amount of loans made under the Federal Perkins Loan Program that it assigns during the award year to the Secretary under section 463(a)(6) of the HEA.

(e) An institution shall use its administrative costs allowance to offset its cost of administering the Federal Pell Grant, FWS, FSEOG, and Federal Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(f) An institution may use up to 10 percent of the administrative costs allowance, as calculated under paragraph (c) of this section, that is attributable to the institution's expenditures under the FWS program to pay the administrative costs of conducting its program of community service. These costs may include the costs of--

(1) Developing mechanisms to assure the academic quality of a student's experience;

(2) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(3) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990 in the planning, development, and administration of these programs.

(g) If an institution charges any administrative cost allowance against its Federal Perkins Loan Fund, it must charge these costs during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1070b-2, 1087cc, and 1096, 42 U.S.C. 2753)

PART 674--FEDERAL PERKINS LOAN PROGRAM

Subpart A--General Provisions

Sec.

674.1 Purpose and identification of common provisions.

674.2 Definitions.

674.3 [Removed]

674.4 [Removed]

674.5 Federal Perkins Loan program cohort default rate and penalties.

674.6 Default reduction plan.

674.7 Expanded lending option (ELO).

674.8 Program participation agreement.

674.9 Student eligibility.

674.10 Selection of students for loans.

674.11 [Reserved]

674.12 Loan maximums.

674.13 Reimbursement to the Fund.

674.14 [Removed]

674.15 [Removed]

674.16 Making and disbursing loans.

674.17 Federal interest in allocated funds--transfer of Fund.

674.18 Use of funds.

674.19 Fiscal procedures and records.

674.20 Compliance with equal credit opportunity requirements

Subpart B--Terms of Loans

674.31 Promissory note.

674.32 Special terms: loans to less than half-time student borrowers.

674.33 Repayment.

674.34 Deferment of repayment--Federal Perkins loans and Direct loans made on or after July 1, 1993.

674.35 Deferment of repayment--Federal Perkins loans made before July 1, 1993.

674.36 Deferment of repayment--Direct loans made on or after October 1, 1980, but before July 1, 1993.

674.37 Deferment of repayment--Direct loans made before October 1, 1980 and Defense loans.

674.38 Deferment procedures.

674.39 Postponement of loan repayments in anticipation of cancellation--loans made before July 1, 1993.

674.40 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

Subpart C--Due Diligence

674.41 Due diligence--general requirements.

674.42 Contact with the borrower.

674.43 Billing procedures.

674.44 Address searches.

674.45 Collection procedures.

674.46 Litigation procedures.

674.47 Costs chargeable to the Fund.

674.48 Use of contractors to perform billing and collection or other program activities.

674.49 Bankruptcy of borrower.

674.50 Assignment of defaulted loans to the United States.

Subpart D--Loan Cancellation

674.51 Special definitions.

674.52 Cancellation procedures.

674.53 Teacher cancellation--Federal Perkins loans and Direct loans made on or after July 23, 1992.

674.54 Teacher cancellation--Federal Perkins loans and Direct loans made before July 23, 1992.

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674.55 Teacher cancellation--Defense loans.

674.56 Employment cancellation--Federal Perkins loans and Direct loans made on or after July 23, 1992.

674.57 Cancellation for law enforcement or corrections officer service--Federal Perkins loans and Direct loans for loans made on or after November 29, 1990.

674.58 Cancellation for service in a Head Start program.

674.59 Cancellation for military service.

674.60 Cancellation for volunteer service--Perkins loans.

674.61 Cancellation for death or disability.

674.62 No cancellation for prior service--no repayment refunded.

674.63 Reimbursement to institutions for loan cancellation.

Apendices A through D [Reserved]

Appendix E--Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Authority: 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421-429, unless otherwise noted.

Subpart A--General Provisions

Sec. 674.1 Purpose and identification of common provisions.

(a) The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Federal Perkins Loan Program, authorized by Title IV-E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan Program, is a continuation of the National Defense Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV-E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common of all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV-E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92-318, Sec. 137(d)(1))

Note: (b)(1) amended July 21, 1992, effective September 18, 1992.

Sec. 674.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Award year
Defense loan
Direct loan
Enrolled
Federal Family Education Loan (FFEL) Program
Federal Pell Grant Program
Federal Perkins loan
Federal Perkins Loan Program
Federal PLUS Program
Federal SLS Program
Federal Supplemental Educational Opportunity Grant (FSEOG) Program
Federal Work-Study (FWS) Program
Full-time student
HEA
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Payment period
Secretary

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment, or cancellation is granted after the borrower enters repayment.

**Expected family contribution (EFC)*: The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

**Financial need*: The difference between a student's cost of attendance and his or her EFC.

Fund (Federal Perkins Loan Fund): A fund established and maintained according to Sec. 674.8.

Graduate or professional student: A student who--

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time student. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Federal Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

**Institution of higher education (institution)*: A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Making of a loan: When the borrower signs the promissory note for the award year and the institution makes the first disbursement of loan funds under that promissory note for that award year.

National credit bureau: Any one of the national credit bureaus with which the Secretary has an agreement.

**Need-based employment*: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Federal Perkins Loan.

Total monthly gross income: The gross amount of income received by the borrower from employment (either full-time or part-time) and from other sources.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087hh)

Note: (b) amended July 21, 1992, effective September 18, 1992, and November 30, 1994, effective July 1, 1995. "Full-time student" added to (a); "Full-time graduate or professional student", "Full-time undergraduate student", and "Satisfactory arrangements to repay the loan" removed from and "making of a loan" amended in (b) December 1, 1995, effective July 1, 1996. "Payment period" added to (a); (a) introductory clause amended; and "Payment period" removed from (b) November 29, 1996, effective July 1, 1997.

Sec. 674.3 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.4 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.5 Federal Perkins Loan program cohort default rate and penalties.

(a) *Default penalty.* If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) If the institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan in accordance with 674.6.

(2) If the institution's cohort default rate equals or exceeds 20 percent, but is less than 25 percent, the institution's FCC is reduced by 10 percent.

(3) If the institution's cohort default rate equals or exceeds 25 percent, but is less than 30 percent, the institution's FCC is reduced by 30 percent.

(4) If the institution's cohort default rate equals or exceeds 30 percent, the institution's FCC is reduced to zero.

(b) *Cohort default rate.* (1) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) In determining the number of students who default before the end of the following award year, the Secretary excludes any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

(3) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the "cohort default rate" means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section--

(1) A borrower must be included only if the borrower's default has persisted for at least--

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) Any loan that is in default, but on which the borrower has made satisfactory arrangements to repay the loan, or any loan that has been rehabilitated before the end of the following award year is not considered to be in default for purposes of the cohort default rate calculation; and

(ii) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year; and

(4) Improper servicing or collection means the failure of the institution to comply with subpart C of this part.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(e) *Satisfactory arrangements to repay the loan.* The Secretary considers that the borrower has made satisfactory arrangements to repay the loan when the borrower has--

(1) Paid the loan in full; or

(2) Executed a new written repayment agreement; and

(3) Made one payment each month for six consecutive months.

(f) *Loan rehabilitation.* (1) The Secretary considers that the borrower has rehabilitated the loan when the borrower has--

(i) Paid the loan in full; or

(ii) Executed a new written repayment agreement; and

(iii) Made one payment each month for 12 consecutive months.

(2) Within 30 days of the date of the rehabilitation, the institution shall report the rehabilitation to any national credit bureau.

(Authority: 20 U.S.C. 1087bb)

Note: Section added November 30, 1994, effective July 1, 1995. (e) redesignated as (f); new (e) added; and redesignated (f) amended December 1, 1995, effective July 1, 1996.

674.6 Default reduction plan.

(a) *General.* An institution with a cohort default rate that equals or exceeds 15 percent shall establish and implement a plan designed to reduce defaults by its students in the future. The institution shall submit to the Secretary by December 31 of the calendar year in which the cohort default rate was calculated--

(1) A written description of the default reduction plan or

(2) A statement indicating that the institution agrees to comply with the required measures in paragraph (b) of this section.

(b) *Required measures.* The default reduction plan required under this section must include a description of the measures to be taken by the institution to reduce defaults. The institution shall explain how it plans to implement the following measures:

(1) Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those who are not high school graduates or those who are in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

(2) Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, including--

(i) Providing academic counseling and other support services to students on a regular basis, at a time and location that is convenient for the students involved;

(ii) Publicizing the availability of the academic counseling and other support services;

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(iii) Establishing procedures to identify academically high-risk students and schedule those students for immediate counseling services; and

(iv) Maintaining records identifying those students who receive academic counseling.

(3) Attempt to reduce its withdrawal rate by conforming with that accrediting agency's standards of satisfactory progress and with those described in 34 CFR 668.14, and improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with its academic accrediting agency.

(4) Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution. Reviews must be conducted each month.

(5) Expand its job placement program for its students by--

(i)(A) Increasing contacts with local employers, counseling students in job search skills, and

(B) Exploring with local employers the feasibility of establishing internship and cooperative education programs;

(ii) Attempting to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with the cognizant accrediting body; and

(iii) Establishing a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

(6) Remind the borrower of the importance of the repayment obligation and of the consequences of default and update the institution's records regarding the borrower's employer and employer's address as part of the contacts with the borrower under 674.42(b).

(7) Obtain from the borrower at the time of a borrower's admission to the institution information regarding references and family members beyond those provided on the loan application to provide the institution or its agent with a variety of ways to locate a borrower who later relocates without notifying the institution.

(8) Explain to a prospective student that the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Federal Perkins Loan.

(9) Use a written test and intensive additional counseling for those borrowers who fail the test to ensure the borrower's comprehension of the terms and conditions of the loan including those described in 674.16 and 674.42(a) as part of the initial loan counseling and the exit interview.

(10) During the exit interview provided to a Federal Perkins Loan borrower--

(i) Explain the use by institutions of outside contractors to service and collect loans;

(ii) Provide general information on budgeting of living expenses and other aspects of personal financial management; and

(iii) Provide guidance on the preparation of correspondence to the borrower's institution or agent and completion of deferment and cancellation forms.

(11) Use available audio-visual materials such as videos and films to enhance the effectiveness of the initial and exit counseling.

(12) Conduct an annual comprehensive self-evaluation of its administration of the title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

(13) Delay loan disbursements to first-time borrowers for 30 days after enrollment.

(14) Require first-time borrowers to endorse their loan check at the institution and to pick up at the institution any loan proceeds remaining after deduction of institutional charges.

(Authority: 20 U.S.C. 1087bb)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: Section added November 30, 1994, effective July 1, 1995. (a)(3) removed September 26, 1997, effective October 27, 1997.

674.7 Expanded lending option (ELO).

(a) To participate in the expanded lending option in any award year, an eligible institution shall enter into a special ELO participation agreement with the Secretary. The agreement provides that the institution shall--

(1) Deposit ICC equal to 100 percent of the FCC described in 674.8(a)(1) for that award year into the Fund;

(2) Maintain a cohort default rate that is equal to or less than 15 percent; and

(3) Have participated in the Federal Perkins Loan program for at least two years.

(b) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow in any academic year is--

(1) $4,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(c) The aggregate maximum amount of Federal Perkins and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow is--

(1) $8,000 for a student who has not successfully completed two years of a program leading to a bachelor's degree;

(2) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree; and

(3) $40,000 for a graduate or professional student.

(d) The maximum annual amounts described in paragraph (b) of this section and the aggregate maximum amounts described in paragraph (c) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(e) For each student, the maximum annual amounts described in paragraphs (b) and (d) of this section and the aggregate maximum amounts listed in paragraphs (c) and (d) of this section include any amount borrowed previously by that student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(f) The institution shall deposit into its Fund an amount required under paragraph (a)(1) of this section whether or not the institution makes loans in the amount authorized under paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1087cc, 1087dd)

Note: Section added November 30, 1994, effective July 1, 1995.

Sec. 674.8 Program participation agreement.

To participate in the Federal Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that--

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund--

(1) FCC received under this subpart;

(2) Except as provided in paragraph (a)(1) of 674.7--

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993-94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994-95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

(4) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

(5) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(6) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(7) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for--

(1) Making loans to students;

(2) Administrative expenses as provided for in 34 CFR 673.7;

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see Sec. 674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see Sec. 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes--

(1) For institutions in which 30 or more of its current or former students first entered repayment in an award year--

(i) The total number of borrowers who first entered repayment in the award year; and

(ii) The number of those borrowers in default by the end of the following award year; or

(2) For institutions in which less than 30 of its current or former students entered repayment in an award year--

(i) The total number of borrowers who first entered repayment in any of the three most recent award years; and

(ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Authority: 20 U.S.C. 1087cc, 1087cc-1, 1094)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a) introductory text and (a)(4) amended July 21, 1992, effective September 18, 1992. (a)(2), (a)(3), an (c) amended November 30, 1994, effective July 1, 1995.

Sec. 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Federal Perkins Loan program for an award year if the student--

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order--

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student--

(1) A SAR as a result of applying for a grant under the Federal Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Federal Pell Grant by the institution's financial aid administrator after applying for a SAR with a Federal Pell Grant Processor;

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan is evidence that the student is unwilling to repay the loan;

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

(g) Reaffirms any Federal Perkins, Direct, or Defense loan amount that previously was written off (if the amount of the write-off exceeded $25); and

(h)(1) In the case of a borrower whose previous loan was canceled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(2) Signs a statement acknowledging that any new Federal Perkins or Direct loan the borrower received cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(i) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower--

(1) Signing a new promissory note or new repayment agreement; or

(2) Making a payment on the loan.

(Authority: 20 U.S.C. 1087aa, 1087dd, and 1091)

Note: (b) amended and (f), (g), (h), and (i) added November 30, 1994, effective July 1, 1995. (a) revised September 26, 1997, effective October 27, 1997.

Sec. 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under Sec. 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of the dollar amount of those loans made under this part.

(c) The institution shall establish selection procedures and these procedures must be--

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Authority: 20 U.S.C. 1087cc and 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b) amended November 30, 1994, effective July 1, 1995.

Sec. 674.11 [Reserved]

Sec. 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow in any academic year is--

(1) $3,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $5,000 for a graduate or professional student.

(b) The aggregate maximum amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow is--

(1) $15,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $30,000 for a graduate or professional student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

Note: Section amended November 30, 1994, effective July 1, 1995.

Sec. 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of--

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed--

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section--

(1) That the institution--

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd-1087hh)

Note: (b)(1)(ii) amended November 30, 1994, effective July 1, 1995.

Sec. 674.14 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.15 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau at least annually.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to a national credit bureau.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing--

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with Sec. 668.164.

(2) The institution shall obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds to the borrower under that note for that award year.

(e) The institution shall advance funds to a student in accordance with the provisions of Sec. 668.164.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes--

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Federal Perkins Loan program is less than $501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(i) An institution shall report to any one national credit bureau--

(1) The amount of each disbursement;

(2) The date the disbursement was made, and

(3) Information as specified in section 430A of the Act.

(Authority: 20 U.S.C. 1987cc, 1087cc-1, 1087dd, 1091 and 1094)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a)(1)(ii), (a)(1)(x), and (g) amended and (j) added November 30, 1994, effective July 1, 1995. (d) and (e) amended December 1, 1994, effective July 1, 1995. (d) amended June 30, 1995, effective July 31, 1995. (d) amended December 1, 1995, effective July 1, 1996. (d) (1) and (e) amended; (g) removed; and (h), (i), and (j) redesignated as (g), (h), and (i), respectively, November 29, 1996, effective July 1, 1997.

Sec. 674.17 Federal interest in allocated funds--transfer of Fund.

(a) If an institution responsible for a Federal Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(1) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(2) The transfer of the outstanding loans to another institution.

(3) The transfer of the outstanding loans to the Department of Education.

(b) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(c) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(d) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of--

(1) The offering institution's demonstrated loan collection capability; and

(2) The number of students of the transferor institution expected to enroll in the offering institution.

(e) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

Note: (a) removed and remaining section redesignated December 1, 1995, effective July 1, 1996.

Sec. 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Federal Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in Sec. 674.8(b).

(b) *Transfer of funds.* (1) An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

(2) An institution may transfer up to the total of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Work-Colleges program.

(3) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(4) An institution shall report any transferred funds on the Fiscal Operations Report required under 674.19(d).

(5) An institution shall transfer back to the Federal Perkins Loan program any funds unexpended at the end of the award year that it transferred to the FWS program, the FSEOG program, or the Work-Colleges program from the Federal Perkins Loan program.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

Note: (b)(4) amended July 21, 1992, effective September 18, 1992. (c) added November 30, 1994, effective July 1, 1995. (b) removed and (c) redesignated as (b) November 27, 1996, effective July 1, 1997.

Sec. 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Federal Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds of the accounts into which those funds are deposited by--

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Federal Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* An institution shall maintain the funds it receives under this part in accordance with the requirements in Sec. 668.163.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(e) *Retention of records--*(1) *Records.* An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

(ii) The history must also show the date, nature, and result of each contact with the borrower in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower, except bills, routine overdue notices, and routine form letters.

(3) *Period of retention of repayment records.* An institution shall retain repayment records, including cancellation and deferment requests, for at least three years from the date on which a loan is assigned to the Department of Education, canceled, or repaid.

(4) *Manner of retention of promissory notes and repayment schedules.* (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until--

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (e)(2)(i) amended July 21, 1992, effective September 18, 1992. (e)(2)(ii) amended November 30, 1994, effective July 1, 1995. (b) amended December 1, 1994, effective July 1, 1995. (e)(4)(v) amended December 1, 1995, effective July 1, 1996. (e)(4)(v) removed; (e)(4)(vi) redesignated as (e)(4)(v); (d), (e)(1), (e)(3), and (e)(4) heading amended November 27, 1996, effective July 1, 1997. (b) revised September 26, 1997, effective October 27, 1997.

Sec. 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Federal Perkins Loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Authority: 20 U.S.C. 1087aa-1087hh)

(Approved by the Office of Management and Budget under control number 1840-0535)

Subpart B--Terms of Loans

Sec. 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only the promissory note that the Secretary provides. The institution

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may make only nonsubstantive changes, such as changes to the type style or font, or the addition of items such as the borrower's driver's license number, to this note.

(2)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if--

(A) The note requires the signature of the borrower on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under 674.33(b).

(b) *Provisions of the promissory note*--(1) *Interest.* The promissory note must state that--

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in Sec. 674.32, the promissory note must state that the repayment period--

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Direct Loans made before October 1, 1980 and Federal Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see Sec. 674.33(b)), extensions of repayment (see Sec. 674.33(c)), forbearance (see Sec. 674.33(d)), or deferments (see Secs. 674.34, 674.35, and 674.36);

(ii) The promissory note must state that the borrower shall repay the loan--

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

(4) *Prepayment.* The promissory note must state that--

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not--

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Federal Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with Sec. 674.43(b)(2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be--.

(1) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(2) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(3) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may--

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due, or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement.

(7) *Assignment.* The promissory note must state that a note may only be assigned to--

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Federal Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not--

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that--

(i) The institution shall disclose to any one national credit bureau the amount of the loan made to the borrower, along with other relevant information;

(ii) If the borrower defaults on the loan, the institution shall disclose that the borrower has defaulted on the loan, along with other relevant information, to the same national credit bureau to which it originally reported the loan; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau that the borrower has defaulted on the loan, along with other relevant information.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b)(2)(i)(B), (b)(3), and (b)(5)(iii)(A) amended July 21, 1992, effective September 18, 1992. (a)(2), (b)(6), and (b)(10) amended November 30, 1994, effective July 1, 1995. (a)(1) amended December 1, 1995, effective July 1, 1996. (b)(2)(i)(D) revised September 26, 1997, effective October 27, 1997.

Sec. 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins--

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of--

(i) Nine months from the date the loan was made, or

(ii) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased to be enrolled as at least a half-time regular student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of Sec. 674.31.

(Authority: 20 U.S.C. 1087dd)

Note: (a)(2)(ii) and authority citation amended July 21, 1992, effective September 18, 1992.

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Sec. 674.33 Repayment

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time regular student.

(2) If the last scheduled payment would be $25 or less the institution may combine it with the next-to-last repayment.

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(4) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accrued interest.

(iv) Principal.

(b) *Minimum monthly repayment*--(1) *Minimum monthly repayment option.*

(i) An institution may require a borrower to pay a minimum monthly repayment if--

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and Direct or Federal Perkins loans from one or more institutions.* If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

(4) *Minimum monthly repayment of loans with differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(5) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year at a time if--

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see 674.33(c)); and

(ii) The borrower's scheduled repayment is the minimum monthly repayment described in paragraph (b) of this section.

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is--

(i) $15 for a Defense loan;

(ii) $30 for a Direct Loan or for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) $40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

(7) The institution shall determine the minimum repayment amount under paragraph (b) of this section for loans with repayment installment intervals greater than one month by

multiplying the amounts in paragraph (b) of this section by the number of months in the installment interval.

(c) *Extension of repayment period*--(1) *Hardship*. The institution may extend a borrower's repayment period due to prolonged illness or unemployment.

(2) *Low-income individual*. (i) For Federal Perkins loans and Direct loans made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraph (c)(2)(i)(A) or (B) of this section. The term low-income individual means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Income Protection Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family that includes the borrower and any spouse or legal dependents, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Income Protection Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

(3) Interest continues to accrue during any extension of a repayment period.

(d) *Forbearance*. (1) Forbearance means the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon receipt of a written request and supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of up to 12 months for periods that collectively do not exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if--

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's total monthly gross income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period of forbearance due to a national military mobilization or other national emergency.

(6) Before granting a forbearance to a borrower under paragraph (d)(5)(i) of this section, the institution shall require the borrower to submit at least the following documentation:

(i) Evidence showing the amount of the most recent total monthly gross income received by the borrower; and

(ii) Evidence showing the amount of the monthly payments owed by the borrower for the most recent month for the borrower's title IV loans.

(7) Interest accrues during any period of forbearance.

(8) The institution may not include the periods of forbearance described in this paragraph in determining the 10-year repayment period.

(e) *Compromise of repayment*. (1) An institution may compromise on the repayment of a defaulted loan if--

(i) The institution has fully complied with all due diligence requirements specified in subpart C of this part; and

(ii) The student borrower pays in a single lump-sum payment--

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and

(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears to the institution's capital contribution to the Fund.

(Authority: 20 U.S.C. 425 and 1087dd, Sec. 137(d) of Pub. L. 92-318)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a)(1) amended July 21, 1992, effective September 18, 1992. Paragraph (c)(2) amended December 21, 1992, effective February 4, 1993. (a)(3), (b), and (c)(1) amended and (d) and (e) added November 30, 1994, effective July 1, 1995. (a)(2) amended; (d)(6) and (d)(7) redesignated, and (d)(6) amended December 1, 1995, effective July 1, 1996. (b)(6)(ii) revised and (d)(8) added September 26, 1997, effective October 27, 1997.

674.34 Deferment of repayment--Federal Perkins loans and Direct loans made on or after July 1, 1993.

(a) The borrower may defer making scheduled installment repayment on a Federal Perkins loan or a Direct loan made on or after July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is--

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or post-graduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program, except for a residency program in dentistry.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(4) If a borrower is attending an institution of higher education as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to a deferment for 12 months.

(5) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c)(1) The borrower of a Federal Perkins loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in 674.53, 674.54, 674.56, 674.57, 674.58, 674.59, and 674.60.

(2) The borrower of a Direct loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in 674.53, 674.54, 674.56, 674.57, 674.58, and 674.59.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment.

(e) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is suffering an economic hardship. To qualify for this deferment, the borrower must provide documentation satisfactory to the institution showing that the borrower--

(1) Has been granted an economic hardship deferment under either the FDSL or FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan;

(2) Is receiving payment under a federal or state public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or state general public assistance;

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of--

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act;

(4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on federal postsecondary education loans, as determined under paragraph (e)(9) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section; or

(5) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's total monthly gross income, and the borrower's income minus such burden is less than 220 percent of the amount calculated under paragraph (3) of this section.

(6) For a deferment granted under paragraph (e)(4) or (e)(5) of this section, the institution shall require the borrower to submit at least the following documentation to qualify for an initial period of deferment--

(i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and

(ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for federal postsecondary education loans in accordance with paragraph (e)(9) of this section.

(7) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (e)(3) (e)(4), or (e)(5) of this section, the institution shall require the borrower to submit a copy of the borrower's federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(8) For purposes of paragraphs (e)(3) and (e)(5) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(9) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e) of this section, the institution shall count only the monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been owed on a federal postsecondary education loan if the loan had been scheduled to be repaid in 10 years from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the actual monthly payment amount (if any) that would be owed during the period that the borrower requested an economic hardship deferment.

(f) To qualify for a deferment for study as part of a graduate fellowship program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program.

(g) To qualify for a deferment for study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program--

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals--

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that--

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section in determining the 10-year repayment period.

(i) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: Added November 30, 1994, effective July 1, 1995. Control number added June 15, 1995, effective July 1, 1995. (e) amended December 1, 1995, effective July 1, 1996. (h) revised September 26, 1997, effective October 27, 1997.

674.35 Deferment of repayment--Federal Perkins loans made before July 1, 1993.

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at--

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is--

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.59);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer (see Sec. 674.60);

(4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph--

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which--

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying--

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that--

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its institution program; and

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health-care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months--

(1) During which the borrower is--

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time regular student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower--

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33(c)).

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section when determining the 10-year repayment period.

(i) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1940-0535)

Note: (b)(1), (c)(3) through (c)(5), (d)(3) and (d)(4) introductory text, (d)(4)(iii), and (e)(2) amended July 21, 1992, effective September 18, 1992. (b)(1)(i), (b)(1)(ii), and (c)(5)(i) through (v) added January 12, 1994, effective September 18, 1992. (a), (b)(2), and (c)(5)(iii) amended November 30, 1994, effective July 1, 1995. (c)(1), (c)(3), and (c)(4) revised; (g) removed; (i) redesignated as (g); (h) redesignated as (i); new (h) added September 26, 1997, effective October 27, 1997.

674.36 Deferment of repayment--Direct loans made on or after October 1, 1980, but before July 1, 1993.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at--

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is--

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.59);

(2) A Peace Corps volunteer (see Sec. 674.60);

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship--

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying--

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33)(c))

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), and (e) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b)(1), (c) introductory text, (c)(3), (c)(4), and (g) amended July 21, 1992, effective September 18, 1992. (b)(1)(i), and (b)(1)(ii), and (c)(4)(i) through (v) added January 12, 1994, effective September 18, 1992. (a), (b)(2), and (c)(4)(iii) amended November 30, 1994, effective July 1, 1995. (c)(1), (c)(2), and (c)(3) and (f) revised September 26, 1997, effective October 27, 1997.

Sec. 674.37 Deferment of repayment--Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment--

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at--

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is--

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see Sec. 674.59);

(2) A Peace Corps volunteer (see Sec. 674.60); or

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60).

(d) The institution shall exclude the deferment periods described in paragraphs (b), (c), and (e) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

Note: (b)(1), (c)(3), and (d) amended July 21, 1992, effective September 18, 1992. (b)(1)(i) and (b)(1)(ii) added January 12, 1994, effective September 18, 1992. (c)(1), (c)(2),

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and (c)(3) and (d) revised September 26, 1997, effective October 27, 1997.

Sec. 674.38 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a)(1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution--

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall--

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(d) The institution shall determine the continued eligibility of a borrower for a deferment at least annually.

(Authority: 20 U.S.C. 425, 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (d) added November 30, 1994, effective July 1, 1995.

Sec. 674.39 Postponement of loan repayments in anticipation of cancellation--loans made before July 1, 1993.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower--

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under Sec. 674.53, 674.54, 674.55, 674.56, 674.57, or 674.58.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Federal Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a)(1) amended July 21, 1992, effective September 18, 1992.

Sec. 674.40 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Federal Perkins loans and only one can be canceled, the amount due on the uncancelled loan is the amount established in Sec. 674.31(b)(2), loan repayment terms; Sec. 674.33(b), minimum repayment rates; or Sec. 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

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Subpart C--Due Diligence

Sec. 674.41 Due diligence--general requirements.

(a) *General.* Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart--

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower.

(b) *Coordination of information.* An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine--

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

(Authority: 20 U.S.C. 424, 1087cc)

Note: Section amended November 30, 1994, effective July 1, 1995.

Sec. 674.42 Contact with the borrower.

(a) *Exit interview.* (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance of the loan held by the institution, and the borrower's duty to repay the loan in accordance with the repayment schedule. The institution shall explain to the borrower the consequences of defaulting including, at a minimum, possible referral to a collection firm, reporting to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's rights and responsibilities under the loan, including the following:

(i) The borrower's responsibility to inform the institution immediately of any change of name, address, telephone number, or Social Security number.

(ii) The borrower's rights to forbearance, deferment, cancellation, or postponement of repayment and the procedures for filing for those benefits.

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promissory note or in another written statement provided to the borrower:

(i) The name and the address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(ii) The name and the address of the party to which payments should be sent.

(iii) The estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin.

(iv) The stated interest rate on the loan.

(v) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(vi) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(vii) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(viii) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(ix) The total of interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(x) General information with respect to the average indebtedness of students who have loans at that institution under Part E of the Higher Education Act of 1965, as amended.

(3) The institution shall require the borrower to provide to the institution, during the exit interview--

(i) The borrower's expected permanent address after leaving the institution, regardless of the reason for leaving;

(ii) The name and address of the borrower's expected employer after leaving the institution;

(iii) The name and address of the borrower's next of kin; and

(iv) Any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

(4) At the time of the exit interview the institution shall--

(i) Have the borrower sign the repayment schedule;

(ii) Provide a copy of the signed promissory note and the signed repayment schedule to the borrower; and

(iii) Retain signed copies of both the note and the repayment schedule in the institution's files.

(5) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall--

(i) Provide the borrower, either in person or by mail the information described in paragraphs (a)(1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the repayment schedule to the borrower and request that the borrower promptly sign and return one of the schedules to the institution.

(b) *Contact with the borrower during the initial and post-deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (Direct loans made before October 1, 1980 and Federal Perkins loans), the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

(Authority: U.S.C. 424, 1087cc, 1087cc-1)

(Approved under the Office of Management and Budget under control number 1840-0581)

Note: (a)(2)(x) added and (b)(1)(i) amended July 21, 1992, effective September 18, 1992. (a) amended November 30, 1994, effective July 1, 1995.

Sec. 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower--

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank

account, the institution shall send to the borrower an annual statement of account.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received--

(i) A payment;

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to Sec. 674.47(a), the institution shall assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure--

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either--

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution--

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with Sec. 674.31(b)(5)(See Appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution--

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if--

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in Sec. 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall--

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are--

(i) Deposited in interest-bearing bank accounts that are--

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (a) and (b)(3) introductory texts amended July 21, 1992, effective September 18, 1992. (a)(3) added November 30, 1994, effective July 1, 1995.

Sec. 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include--

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall--

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until--

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under Sec. 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

Note: (a)(3) and (d)(1) amended November 30, 1994, effective July 1, 1995.

Sec. 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in Sec. 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with Sec. 674.43(f), the institution shall--

(1) Report the defaulted account to any one national credit bureau; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b) An institution shall report to the same national credit bureau to which it originally reported the default, according to the reporting procedures of the national credit bureau, any changes in account status and shall respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall either--

(i) Litigate in accordance with the procedures in Sec. 674.46;

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in Sec. 674.50.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until--

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under 674.47(g).

(e)(1) Subject to Sec. 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and Secs. 674.44, 674.46, 674. 48, and 674.49, based on either--

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are--

(i) Deposited in interest-bearing bank accounts that are--

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 424, 1087cc, 1091a)

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (c)(1) introductory text, (c)(1)(i), and (c)(1)(ii)(B) amended and new (c)(1)(iii) added July 21, 1992, effective September 18, 1992. (a)(1), (b), and (d) amended and (g) added November 30, 1994, effective July 1, 1995. (c)(1)(ii)(A) revised September 26, 1997, effective October 27, 1997.

Sec. 674.46 Litigation procedures.

(a)(1) If the collection efforts described in 674.45 do not result in the repayment of a loan, the institution shall determine at least annually whether--

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Federal Perkins, National Direct and National Defense Student Loans held by that institution, is more than $200;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the outstanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower--

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are--

(i) Deposited in interest-bearing bank accounts that are--

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in Sec. 674.41 through 674.46, the institution may--

(1) Submit the account to the Secretary for assignment in accordance with the procedures in Sec. 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

Note: (a)(1) amended November 30, 1994, effective July 1, 1995.

Sec. 674.47 Costs chargeable to the Fund.

(a) *General: Billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the late charges, the institution may charge the Fund only that portion of the late charges which represents the cost of telephone calls to the borrower pursuant to Sec. 674.43.

(b) *General: Collection costs.* (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to Secs. 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to Sec. 674.43 to demand payment of overdue amounts on the loan.

(c) *Waiver: Late charges.* The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) *Waiver: Collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower;

(1) A reasonable amount for the cost of a successful address search required in Sec. 674.44(b).

(2) Costs related to the use of credit bureaus as provided in Sec. 674.45(b)(1).

(3) For first collection efforts pursuant to Sec. 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to Sec. 674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charge collected.

(5) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of–

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under Sec. 674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and

(iv) 40 percent of the total amount recovered from the borrower in any other proceeding.

(6) If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

(f) *Records.* For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in Sec. 674.19.

(g) *Cessation of collection activity of defaulted accounts.* (1) An institution may cease collection activity on a defaulted account with a balance of less than $25, including outstanding principal, accrued interest, collection costs, and late charges, if the borrower has been billed for this balance in accordance with section 674.43(a).

(2) An institution may cease collection activity on a defaulted account with a balance of less than $200, including outstanding principal, accrued interest, collection costs, and late charges, if–

(i) The institution has carried out the due diligence procedures described in subpart C of the part with regard to this account; and

(ii) For a period of at least 4 years, the borrower has not made a payment on the account, converted the account to regular repayment status, or applied for a deferment, postponement, or cancellation on the account.

(h) *Write-offs of accounts of less than $5.* (1) Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than $5, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

Note: (a)(2) amended July 21, 1992, effective September 18, 1992. Paragraphs (d) and (e) amended December 21, 1992, effective February 4, 1993. (g) amended November 30, 1994, effective July 1, 1995. (g) amended and (h) added December 1, 1995, effective July 1, 1996.

Sec. 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under Sec. 674.43, the institution shall ensure that the service--

(1) Provides at least quarterly, a statement to the institution which shows--

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount is receives from borrowers;

(4)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm--(1)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows--

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out Sec. 674.43 (billing procedures), it may not use a collection firm that--

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that--

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of--

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than $100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance--

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a

third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

(Authority: 20 U.S.C. 424, 1087cc).

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (c)(4)(iii) and (d)(1)(iii) amended November 30, 1994, effective July 1, 1995.

Sec. 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

(b) *Proof of claim.* The institution shall file a proof of claim in the bankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

(c) *Borrower's request for determination of dischargeability.* (1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under chapter 7, 11, 12, or 13 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall--

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) *Request for determination of non-dischargeability.* The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) *Chapter 13 repayment plan.* (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under Chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if--

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents--

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the Chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall–

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than seven years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court–

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall–

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) *Resumption of collection from the borrower.* The institution shall resume billing and collection action prescribed in this subpart after–

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless–

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition; and

(B) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless–

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition; and

(B) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

(g) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan if it receives–

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than seven years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed; or

(ii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(iii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (c)(1), (2), and (3); (e)(4)(i); (f) introductory text, (f)(2), (f)(2)(ii)(A), and (f)(3); (h)(1)(i) and (ii) amended July 21, 1992, effective September 18, 1992. (e)(4)(i)(A) and (B) and (f)(2)(i) and (ii) added January 12, 1994, effective September 18, 1992. (a) and (g) amended November 30, 1994, effective July 1, 1995.

Sec. 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if–

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in Sec. 674.45(a) and litigation, if required under Sec. 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is $25.00 or greater; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) An institution shall submit to the Secretary the following documents for any loan it proposes to assign;

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in Sec. 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferment and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if–

(1) The institution has not provided the Social Security number of the borrower;

(2) The borrower has received a discharge in bankruptcy, unless–

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States; or

(4) The borrower has been granted cancellation due to death or has filed for or been granted cancellation due to permanent and total disability.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The institution shall reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (c)(6) amended July 21, 1992, effective September 18, 1992. Paragraph (a)(2) amended December 21, 1992, effective February 4, 1993. (c)(10) amended November 30, 1994, effective July 1, 1995.

Subpart D--Loan Cancellation

Sec. 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete--

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Title I Children:* Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Children and youth with disabilities:* Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(a)(1) of the Individuals with Disabilities Education Act.

(e) *Early intervention services:* Those services defined in section 672(2) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

(f) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by--

(1) State law; or

(2) The Secretary, if the school is not in a State.

(g) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are--

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(h) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(i) *Infants and toddlers with disabilities:* Infants and toddlers from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act.

(j) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(k) *Low-income communities:* Communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965, as amended.

(l) *Medical technician:* An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate State agency in the State in which he or she provides health care services. An allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

(m) *Nurse:* A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

(n) *Qualified professional provider of early intervention services:* A provider of services as defined in section 672(2) of the Individuals with Disabilities Education Act.

(o) *Secondary school:* (1) A school that provides secondary education, as determined by--

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(p) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(q) *Teacher:* (1) A teacher is a person who provides--

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(r) *Teaching in a field of expertise:* The majority of classes taught are in the borrower's field of expertise.

(Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1)).

Note: Amended November 30, 1994, effective July 1, 1995.

Sec. 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b) *Part-time employment.* (l)(i) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(ii) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time.

However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if--

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated--

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) *Concurrent deferment period.* (1) For loans made prior to July 1, 1993, the Secretary considers a borrower's loan deferment under 674.35, 674.36, and 674.37 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under 674.34 to run concurrently with any period for which a cancellation under 674.53, 674.56, 674.57, or 674.58 is granted.

(e) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

(Authority: 20 U.S.C. 425, 1087ee.)

Note: (b), (c), and (d) amended and (e) added November 30, 1994, effective July 1, 1995. (d)(2) revised September 26, 1997, effective October 27, 1997.

Sec. 674.53 Teacher cancellation--Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that--

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(2) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

(6) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching in special education.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or

Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation for full-time teaching in fields of expertise.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a), (b), or (c) of this section, a borrower shall teach full-time for a complete academic year or its equivalent.

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(f) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C 1087ee)

Note: Added November 30, 1994, effective July 1, 1995.

674.54 Teacher cancellation--Federal Perkins loans and Direct loans made before July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made before July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that--

(i) Is in a school district that qualifies for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(2)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(3) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(4) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section, in subsequent years.

(5) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made before July 23, 1992, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this

304

section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 1087ee)

Note: (a) and (b)(1) amended November 30, 1994, effective July 1, 1995.

Sec. 674.55 Teacher cancellation--Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in--

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that--

(i) Is in a school district that qualifies for funds in that year under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(3) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(4) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(5) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966-67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967-68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3).)

674.56 Employment cancellation--Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time employment as a nurse or medical technician.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individuals With Disabilities Education Act.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), and (c) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee)

Note: Section added November 30, 1994, effective July 1, 1995.

674.57 Cancellation for law enforcement or corrections officer service--Federal Perkins loans and Direct loans for loans made on or after November 29, 1990.

(a)(1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An eligible employing agency is an agency--

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is public-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(3) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(4) A borrower qualifies for cancellation under this section only if the borrower is--

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(5) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(6) The agency must be able to document the employee's functions.

(7) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b)(1) To qualify for cancellation under paragraph (a) of this section, a borrower shall work full-time for 12 consecutive months.

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 465)

Note: Section added November 30, 1994, effective July 1, 1995.

Sec. 674.58 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Federal Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if--

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97-35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a)(1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(Authority: 20 U.S.C. 425.)

Sec. 674.59 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of a Direct or Federal Perkins loan.* (1) An institution shall cancel up to 50 percent of a Direct or Federal Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority: 20 U.S.C. 425(b)(3) and 1087ee.)

Sec. 674.60 Cancellation for volunteer service--Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under--

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(b) Cancellation rates are--

(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee.)

Note: (a)(2) amended July 21, 1992, effective September 18, 1992.

674..61 Cancellation for death or disability.

(a) *Death.* An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive. Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.*

(Authority: 20 U.S.C. 425 and 1087dd and Sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b)(2) amended November 30, 1994, effective July 1, 1995.

Sec. 674.62 No cancellation for prior service--no repayment refunded.

(a) No portion of a loan may be canceled for teaching, Head Start, volunteer or military service if the borrower's service is performed--

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1067ee)

Sec. 674.63 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest canceled under 674.55 and 674.59(a).

(2) The institution's share of canceled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

Note: (a) and (b) amended November 30, 1994, effective July 1, 1995.

Appendices A through D [Removed]

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Appendix E--Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Note.–In the below table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

Monthly repayment schedule	Installment due date–Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	$1		....	....	....	....	$1
2nd Past due installment	....	$1+$2	....	....	....	....	3
3rd Past due installment	....	....	$3+$2	....	....	....	5
4th Past due installment	....	....	....	$5+$2	....	....	7
5th Past due installment	....	....	....	....	$7+$2	....	9
6th Past due installment	....	....	....	....	....	$9+$2	11
Cumulative maximum subtotals	1	4	9	16	25	36	......

Bimonthly repayment schedule	Installment due dates–Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3	....	....	$3
2nd Past due installment	....	$3+$3	....	6
3rd Past due installment	....	....	$6+$3	9
Cumulative maximum subtotals	3	9	18	......

Quarterly repayment schedule	Installment due dates–Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	$6	....	$6
2nd Past due installment	....	$6+$6	12
Cumulative maximum subtotals	6	18	......

PART 675--FEDERAL WORK-STUDY PROGRAMS

Subpart A--Federal Work-Study Program

Sec.

675.1 Purpose and identification of common provisions.

675.2 Definitions.

675.3 [Removed]

675.4 [Removed]

675.5-675.7 [Reserved]

675.8 Program participation agreement.

675.9 Student eligibility.

675.10 Selection of students for FWS employment.

675.11-675.13 [Reserved]

675.14 [Removed]

675.15 [Removed]

675.16 Payments to students.

675.17 [Removed and Reserved]

675.18 Use of funds.

675.19 Fiscal procedures and records.

675.20 Eligible employers and general conditions and limitation on employment.

675.21 Institutional employment.

675.22 Employment provided by a Federal, State, or local public agency, or a private nonprofit organization.

675.23 Employment provided by a private for-profit organization.

675.24 Establishment of wage rate under FWS.

675.25 Earnings applied to cost of attendance.

675.26 FWS Federal share limitations.

675.27 Nature and source of institutional share.

675.28 [Removed]

Subpart B--Job Location and Development Program

675.31 Purpose.

675.32 Program description.

675.33 Allowable costs.

675.34 Multi-institutional job location and development programs.

675.35 Agreement.

675.36 Procedures and records.

675.37 Termination and suspension.

Subpart C--Work-Colleges Program

675.41 Special definitions.

675.42 Allocation and reallocation.

675.43 Purpose.

675.44 Program description.

675.45 Allowable costs, Federal share, and institutional share.

675.46 Unallowable costs.

675.47 Multi-institutional work-colleges arrangements.

675.48 Agreement.

675.49 Procedures and records.

675.50 Termination and suspension.

Appendix A [Reserved]

Authority: 42 U.S.C. 2571-2756b, unless otherwise noted.

Note: Authority citation amended July 21, 1992, effective September 18, 1992. Heading amended December 21, 1992, effective February 4, 1993.

PART 675--FEDERAL WORK-STUDY PROGRAMS

Subpart A--Federal Work-Study Program

Sec. 675.1 Purpose and identification of common provisions.

(a) The Federal Work-Study (FWS) program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education and encourages students receiving FWS assistance to participate in community service activities.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751-2756b)

Sec. 675.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR 668:

Academic year
Award year
Clock hour
Enrolled
Federal Family Education Loan (FFEL) programs
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal SLS Program
Federal Supplemental Educational Opportunity Grant (FSEOG) Program
Full-time student
HEA
Secretary

(b) The Secretary defines other terms used in this part as follows:

Community services: Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include--

(1) Such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support services to students (other than an institution's own students) with disabilities; and

(4) Activities in which a student serves as a mentor for such purposes as--

(i) Tutoring;

(ii) Supporting educational and recreational activities; and

(iii) Counseling, including career counseling.

**Expected family contribution (EFC)*: The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

**Financial need*: The difference between a student's cost of attendance and his or her EFC.

Graduate or professional student: A student who--

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

**Institution of higher education (institution)*. A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

**Need-based employment*: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of Sec. 75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51. (Authority: 20 U.S.C. 1141(c))

Student services: Services that are offered to students that are directly related to the work-study student's training or education and that may include, but are not limited to, financial aid, library, peer guidance counseling, and social, health, and tutorial services.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087ii)

Note: (b) amended July 21, 1992 and December 21, 1992, effective September 18, 1992 and February 4, 1993, respectively. (b) amended November 30, 1994, effective July 1, 1995. (a) amended by adding the term "Full-time student" and (b) amended by removing "Full-time graduate or professional student" and "Full-time undergraduate student" December 1, 1995, effective July 1, 1996. (a) introductory clause amended and "Payment period" removed from (b) November 29, 1996, effective July 1, 1997.

Sec. 675.3 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 675.4 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Secs. 675.5-675.7 [Reserved]

Sec. 675.8 Program participation agreement.

To participate in the FWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall--

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the FWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668;

(c) Make employment under the FWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Make equivalent employment offered or arranged by the institution reasonably available, to the extent of available funds, to all students in the institution who want to work;

(e) Award FWS employment, to the maximum extent practicable, that will complement and reinforce each recipient's educational program or career goals;

(f) Assure that employment under this part may be used to support programs for supportive services to students with disabilities; and

(g) Inform all eligible students of the opportunity to perform community services and consult with local nonprofit, governmental, and community-based organizations to identify those opportunities.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

Note: (f) and (g) added November 30, 1994, effective July 1, 1995.

Sec. 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the FWS program for an award year if the student--

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order--

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752-2753)

(a) revised September 26, 1997, effective October 27, 1997.

Sec. 675.10 Selection of students for FWS employment.

(a) An institution shall make employment under FWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be--

(1) Uniformly applied;

(2) In writing; and

(3) Maintained in the institution's files.

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752-2753)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (c) amended November 30, 1994, effective July 1, 1995.

Secs. 675.11-675.13 [Reserved]

Sec. 675.14 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 675.15 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 675.16 Payments to students.

(a)(1)(i) An institution shall pay a student at least once a month. The Federal share of each payment must be paid to the student by check or similar instrument that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(3) A student's FWS wages are earned when the student performs the work.

(4) An institution may pay a student after the student's last day of attendance for FWS wages earned while he or she was in attendance at the institution.

(b)(1) If an institution pays a student its share of his or her FWS wages by check, it shall pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its FWS share for an award period in the form of tuition, fees, services, or equipment, it shall pay that share before the student's final payroll period.

(3) If an institution pays its FWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it shall give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) A correspondence student shall submit his or her first completed lesson before receiving a payment.

(d) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

Note: (b)(1) and (b)(3) amended July 21, 1992, effective September 18, 1992.

***Sec. 675.17 [Removed and Reserved]**

Note: Section removed and reserved December 1, 1995, effective July 1, 1996.

Sec. 675.18 Use of funds.

(a) *General.* An institution may use its FWS allocation only for--

(1) Paying the Federal share of FWS wages;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section;

(3) Meeting the cost of a Work-Colleges program under

subpart C;

(4) Meeting the cost of a Job Location and Development program under Subpart B; and

(5) Transferring a portion of its FWS allocation to its FSEOG program described in paragraph (f) of this section.

(b) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental FWS allocations for the current award year.

(2) Before an institution may spend its current year FWS allocation, it shall spend any funds carried forward from the previous year.

(c) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(d) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(e) *Transfer funds to FSEOG.* (1) Beginning with the 1993-94 award year, an institution may transfer up to 25 percent of the sum of its initial and supplemental FWS allocations for an award year to its FSEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under Sec. 675.19(b).

(f) *Carry back funds for summer employment.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 15 of the previous award year but prior to the beginning of the current award year.

(g) *Community service.* (1) For the 1994-95 award year and subsequent award years, an institution shall use at least 5 percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities.

(2) An institution may request in writing from the Secretary a waiver of the requirement in paragraph (h)(1) of this section. The Secretary approves a waiver only if the Secretary determines that an institution has demonstrated that enforcing the requirement in paragraph (h)(1) of this section would cause a hardship for students at the institution.

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756b)

Note: (a)(4) amended July 21, 1992, effective September 18, 1992. (a), (b), and (f) amended and (g) and (h) added November 30, 1994, effective July 1, 1995. (b) removed and (c), (d), (e), (f), (g), and (h) redesignated as (b), (c), (d), (e), (f), and (g), respectively November 27, 1996, effective July 1, 1997.

Sec. 675.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its FWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3) An institution shall maintain funds received under this part in accordance with the requirements in Sec. 668.163.

(b) *Records and reporting.* (1) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) The institution shall also establish and maintain program and fiscal records that--

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, shall sign the certification. The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see Sec. 675.25(a)); and

(iv) Are reconciled at least monthly.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

(Approved by OMB under control number 1840-0535)

Note: (b)(2)(v) through (b)(2)(vii), (b)(4), (b)(5), and (c) removed;

(b)(2)(iii), (b)(2)(iv), and (b)(1) amended November 27, 1996, effective July 1, 1997. (a)(3) revised September 26, 1997, effective October 27, 1997.

Sec. 675.20 Eligible employers and general conditions and limitation on employment.

(a) *Eligible FWS employers.* A student may be employed under the FWS program by--

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) *Agreement between institution and organization.* (1) If an institution wishes to have its students employed under this part by a Federal, State or local public agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the FWS work conditions. The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that--

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay--

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) *FWS general employment conditions and limitation.* (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of--

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) FWS employment may not--

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

(Authority: 42 U.S.C. 2753)

(Approved by OMB under control number 1840-0535)

(b) revised September 26, 1997, effective October 27, 1997.

Sec. 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies--

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that--

(1) Are in community services as defined in 675.2; or

(2) Are on campus and that--

(i) Involve the provision of student services as defined in 675.2

(ii) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(iii) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

Note: (b) amended November 30, 1994, effective July 1, 1995.

Sec. 675.22 Employment provided by a Federal, State, or local public agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) *FWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if--

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves lobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

Note: (b)(6) amended July 21, 1992, effective September 18, 1992. Heading revised September 26, 1997, effective October 27, 1997.

Sec. 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its FWS allocation and reallocation for an award year to pay the compensation of FWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization--

(1) The work that the student performs must be academically relevant to the student's educational program; and

(2) The private for-profit organization--

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any FWS funds to pay an employee who would otherwise be employed by that organization.

(Authority: 42 U.S.C. 2753)

Note: (b)(2)(ii) amended July 21, 1992, effective September 18, 1992.

Sec. 675.24 Establishment of wage rate under FWS.

(a) *Wage rates.* (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute FWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the FWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

Sec. 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a FWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the FWS employment.

(b) If a student is employed under FWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

Sec. 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in 675.23, may not exceed 75 percent for the 1993-94 award year and subsequent award years unless the Secretary approves a higher share under paragraph (d) of this section.

(2) The Federal share of the compensation paid to a student employed by a private for-profit organization may not exceed 50 percent.

(3) An institution may not use FWS funds to pay a student after he or she has, in addition to other resources, earned $300 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its non-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be--

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if--

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organization; and

(2)(i) The institution in which the student is enrolled--

(A) Is designated as an eligible institution under the Strengthening Institutions Program (34 CFR part 607), the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608), or the Strengthening Historically Black Graduate Institutions Program (34 CFR part 609); and

(B) Requests that increased Federal share as part of its regular FWS funding application for that year;

(ii) The student is employed as a reading tutor for preschool age children or children who are in elementary school; or

(iii) The student is employed as a tutor in a family literacy program that provides services to families with preschool age children or children who are in elementary school.

(Authority: 20 U.S.C. 1069a, 42 U.S.C. 2753)

Note: (a) amended November 30, 1994, effective July 1, 1995. (d) revised November 27, 1996, effective July 1, 1997. (d) revised November 28, 1997, effective July 1, 1998.

Sec. 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the FWS program, to pay the institutional share of FWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the FWS program.

(b) An institution may not solicit or accept fees, commissions, contributions, or gifts as a condition for FWS employment, nor permit any organization with which it has an employment agreement to do so.

(Authority: 42 U.S.C. 2754)

(Approved by OMB under control number 1840-0535)

Authority citation revised September 26, 1997, effective October 27, 1997.

Sec. 675.28 [Removed]

Note: Removed November 30, 1994, effective July 1, 1995.

Subpart B--Job Location and Development Program

Sec. 675.31 Purpose.

The purpose of the Job Location and Development program is to expand off-campus job opportunities for students who are enrolled in eligible institutions of higher education and want jobs, regardless of their financial need, and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756)

Note: Amended November 30, 1994, effective July 1, 1995.

Sec. 675.32 Program description.

An institution may expend up to the lesser of $50,000 or 10 percent of its FWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs, including community service jobs, for currently enrolled students.

(Authority: 42 U.S.C. 2756)

Note: Amended November 30, 1994, effective July 1, 1995.

Sec. 675.33 Allowable costs.

(a)(1) *Allowable and unallowable costs.* Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in Sec. 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) *Federal share of allowable costs.* An institution may use FWS funds, as provided in Sec. 675.32, to pay up to 80 percent of allowable costs.

(c) *Institutional share of allowable costs.* An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

675.34 Multi-institutional job location and development programs.

(a) An institution participating in the FWS program may enter into a written agreement to establish and operate job location programs for its students with other participating institutions.

(b) The agreement described in paragraph (a) of this section must--

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Authority: 42 U.S.C. 2756)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a) and (c) amended November 30, 1994, effective July 1, 1995.

Sec. 675.35 Agreement.

(a) A FWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide--

(1) That the institution will administer the programs in accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that--

(i) The institution will not use program funds to locate and develop jobs at an eligible institution;

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another institution, suitable performance standards will be part of that contract.

(Authority: 42 U.S.C. 2756)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b)(1), (b)(3)(i), and (b)(3)(v) amended November 30, 1994, effective July 1, 1995.

Sec. 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of Sec. 675.19.

(Authority: 42 U.S.C. 2756a)

Sec. 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the FWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred--

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

Subpart C--Work-Colleges Program

Note: Added November 30, 1994, effective July 1, 1995.

675.41 Special definitions.

The following definitions apply to this subpart:

(a) *Work-college*: The term "work-college" means an eligible institution that--

(1) Is a public or private nonprofit institution with a commitment to community service;

(2) Has operated a comprehensive work-learning program for at least two years;

(3) Requires--

(i) All resident students who reside on campus to participate in a comprehensive work-learning program; and

(ii) The provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and

(4) Provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning program*: A student work/service program that--

(1) Is an integral and stated part of the institution's educational philosophy and program;

(2) Requires participation of all resident students for enrollment, participation, and graduation;

(3) Includes learning objectives, evaluation, and a record of work performance as part of the student's college record;

(4) Provides programmatic leadership by college personnel at levels comparable to traditional academic programs;

(5) Recognizes the educational role of work-learning supervisors; and

(6) Includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

(Authority: 42 U.S.C. 2756b)

675.42 Allocation and reallocation.

The Secretary allocates and reallocates funds based on each institution's approved request for Federal funds for the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

(Authority: 42 U.S.C. 2756b)

675.43 Purpose.

The purpose of the Work-Colleges program is to recognize, encourage, and promote the use of comprehensive work-learning programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan that decreases reliance on grants and loans and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756b)

675.44 Program description.

(a) An institution that satisfies the definition of "work-college" in 675.41(a) and wishes to participate in the Work-Colleges program must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(b) An institution may expend funds separately, or in combination with other eligible institutions, to provide work-learning opportunities for currently enrolled students.

(c) For any given award year, Federal funds allocated and reallocated for that award year under sections 442 and 462 of the HEA may be transferred for the purpose of carrying out the Work-Colleges program to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

(Authority: 42 U.S.C. 2756b)

675.45 Allowable costs, Federal share, and institutional share.

(a) *Allowable costs.* An institution participating in the Work-Colleges program may use its allocated and reallocated program funds to carry out the following activities:

(1) Support the educational costs of qualified students through self-help payments or credits provided under the work-learning program within the limits of part F of title IV of the HEA.

(2) Promote the work-learning-service experience as a tool of postsecondary education, financial self-help, and community service-learning opportunities.

(3) Carry out activities in sections 443 or 446 of the HEA.

(4) Administer, develop, and assess comprehensive work-learning programs including--

(i) Community-based work-learning alternatives that expand opportunities for community service and career-related work; and

(ii) Alternatives that develop sound citizenship, encourage student persistence, and make optimum use of assistance under the Work-Colleges program in education and student development.

(b) *Federal share of allowable costs.* An institution, in addition to the funds allocated and reallocated for this program, may use transferred funds provided under its Federal Perkins Loan or its FWS program to pay allowable costs.

(c) *Institutional share of allowable costs.* An institution must match Federal funds made available for this program on a dollar-for-dollar basis from non-Federal sources. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756b)

675.46 Unallowable costs.

An institution participating in the Work-Colleges program may not use its allocated and reallocated program funds and transferred funds provided under its Federal Perkins Loan or its FWS program to pay costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs.

(Authority: 42 U.S.C. 2756b)

675.47 Multi-institutional work-colleges arrangements.

(a) An institution participating in the Work-Colleges program may enter into a written agreement with another participating institution to promote the work-learning-service experience.

(b) The agreement described in paragraph (a) of this section must--

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Authority: 42 U.S.C. 2756b)

(Approved by the Office of Management and Budget under control number 1840-0535)

675.48 Agreement.

To participate in the Work-Colleges program, an institution shall enter into an agreement with the Secretary. The agreement provides that, among other things, the institution shall--

(a) Assure that it will comply with all the appropriate provisions of the HEA and the appropriate provisions of the regulations;

(b) Assure that it satisfies the definition of "work-college" in 675.41(a);

(c) Assure that it will match the Federal funds according to the requirements in 675.45(c); and

(d) Assure that it will use funds only to carry out the activities in 675.45(a).

(Authority: 42 U.S.C. 2756b)

(Approved by the Office of Management and Budget under control number 1840-0535)

675.49 Procedures and records.

In administering a Work-Colleges program under this subpart, an institution shall comply with the applicable provisions of 34 CFR part 673 and this part 675.

Note: Section amended November 27, 1996, effective July 1, 1997.

(Authority: 42 U.S.C. 2756b)

675.50 Termination and suspension.

Procedures for termination and suspension under this subpart are governed by applicable provisions found in 34 CFR part 668, subpart G of the Student Assistance General Provisions regulations.

(Authority: 42 U.S.C. 2756b)

Appendix A--[Reserved]

PART 676--FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Sec.

676.1 Purpose and identification of common provisions.

676.2 Definitions.

676.3 [Removed]

676.4 [Removed]

676.5-676.7 [Reserved]

676.8 Program participation agreement.

676.9 Student eligibility.

676.10 Selection of students for FSEOG awards.

676.11-676.13 [Reserved]

676.14 [Removed]

676.15 [Removed]

676.16 Payment of an FSEOG.

676.17 [Removed and Reserved]

676.18 Use of funds.

676.19 Fiscal procedures and records.

676.20 Minimum and maximum FSEOG award.

676.21 FSEOG Federal share limitations.

Authority: 20 U.S.C. 1070b-1070b-3, unless otherwise noted.

Note: Heading amended December 21, 1992, effective February 4, 1993.

Sec. 676.1 Purpose and identification of common provisions.

(a) The Federal Supplemental Educational Opportunity Grant (FSEOG) program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 20 U.S.C. 1070b)

Note: (a) amended November 30, 1994, effective July 1, 1995.

Sec. 676.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Award year
Clock hour
Enrolled
Federal Family Education Loan (FFEL) programs
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal SLS Program
Federal Work-Study (FWS) Program
Full-time student
HEA
Payment period
Secretary

(b) The Secretary defines other terms used in this part as follows:

**Expected family contribution (EFC)*: The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

**Financial need*: The difference between a student's cost of attendance and his or her EFC.

**Institution of higher education (institution)*: A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

**Need-based employment*: Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who--

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree.

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A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087ii)

Note: (b) amended July 21, 1992, effective September 18, 1992. (a) amended by adding "Full-time student" and (b) amended by removing "Full-time undergraduate student" December 1, 1995, effective July 1, 1996. "Payment period" added to (a); (a) introductory clause amended; and "Payment period" removed from (b) November 29, 1996, effective July 1, 1997.

Sec. 676.3 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 676.4 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Secs. 676.5-676.7 [Reserved]

Sec. 676.8 Program participation agreement.

To participate in the FSEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall--

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the FSEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

(Authority: 20 U.S.C. 1070b et seq., and 1094)

Sec. 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an FSEOG for an award year if the student--

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order--

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b-1, 1070b-2 and 1091)

(a) revised September 26, 1997, effective October 27, 1997.

Sec. 676.10 Selection of students for FSEOG awards.

(a)(1) In selecting among eligible students for FSEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Federal Pell Grants in that year.

(2) If the institution has FSEOG funds remaining after giving FSEOG awards to all the Federal Pell Grant recipients at the institution, the institution shall award the remaining FSEOG funds to those eligible students with the lowest expected family contributions who will not receive Federal Pell Grants.

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

(Authority: 20 U.S.C. 1070b-2)

Sec. 676.11-676.13 [Reserved]

Sec. 676.14 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 676.15 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 676.16 Payment of an FSEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an FSEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{FSEOG}{N}$$

Where:

FSEOG=the total FSEOG awarded for an academic year and N=the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may pay FSEOG funds to the student for those uneven costs.

(c) An institution shall disburse funds to a student or the student's account in accordance with the provisions in Sec. 668.164.

(d)(1) The institution shall return to the FSEOG account any funds paid to a student who, before the first day of classes--

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(e) Only one payment is necessary if the total amount the institution awards a student for an academic year under the FSEOG program is less than $501.

(f) A correspondence student shall submit his or her first completed lesson before receiving an FSEOG payment.

(Authority: 20 U.S.C. 1070b 1091)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (f) and (g) redesignated as (g) and (h), new (f) added November 30, 1994, effective July 1, 1995. (d) removed and paragraphs (e), (f), (g), and (h) redesignated as paragraphs (d), (e), (f), and (g), respectively, and paragraph (c) amended December 1, 1994, effective July 1, 1995. (c) amended; (e) removed; and (f) and (g) redesignated as (e) and (f), respectively, November 29, 1996, effective July 1, 1997.

*Sec. 676.17 [Removed and Reserved]

Note: Section removed and reserved December 1, 1995, effective July 1, 1996.

Sec. 676.18 Use of funds.

(a) *General.* An institution may use its FSEOG allocation and reallocation only for--

(1) Making grants to eligible students; and

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section.

(b) *Transfer back of funds to FWS.* An institution shall transfer back to the FWS program any funds unexpended at the end of the award year that it transferred to the FSEOG program from the FWS program.

(Authority: 20 U.S.C. 1070b et seq., 1095 and 1096)

Note: (a) and (c) amended November 30, 1994, effective July 1, 1995. (b) removed and (c) redesignated as (b) November 27, 1996, effective July 1, 1997.

Sec. 676.19 Fiscal procedures and records.

(a) *Fiscal Procedures.* (1) In administering its FSEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) An institution shall maintain funds received under this part in accordance with the requirements in Sec. 668.163.

(b) *Records and reporting.* (1) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

(Approved by OMB under control number 1840-0535)

Note: (a)(2) amended December 1, 1994, effective July 1, 1995. (c)(3) amended December 1, 1995, effective July 1, 1996. (b) amended and (c) removed November 27, 1996, effective July 1, 1997. (a)(2) revised September 26, 1997, effective October 27, 1997.

Sec. 676.20 Minimum and maximum FSEOG award.

(a) An institution may award an FSEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, except as provided in paragraph (c) of this section, an FSEOG may not be awarded for a full academic year that is--

(1) Less than $100; or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable FSEOG may be proportionately reduced.

(c) The maximum amount of the FSEOG may be increased from $4,000 to as much as $4,400 for a student participating in a program of study abroad that is approved for credit by the home institution, if reasonable costs for the study abroad program exceed the cost of attendance at the home institution.

(Authority: 20 U.S.C. 1070, 1070b-1)

Note: (a) amended and (c) added November 30, 1994, effective July 1, 1995.

Sec. 676.21 FSEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section, for the 1993-94 award year and subsequent award years, the Federal share of the FSEOG awards made by an institution may not exceed 75 percent of the amount of FSEOG awards made by that institution.

(b) The Secretary authorizes, for each award year, a Federal share of 100 percent of the FSEOGs awarded to students by an institution that--

(1) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607) or the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608); and

(2) Requests that increased Federal share as part of its regular FSEOG funding application for that year.

(c) The non-Federal share of FSEOG awards must be made from the institution's own resources, which include for this purpose--

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1070b-2 and 1069a)

Note: (a) and (b) amended November 30, 1994, effective July 1, 1995.

PART 682--FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

Subpart A--Purpose and Scope

Sec.

682.100 The Federal Family Education Loan programs.

682.101 Participation in the FFEL programs.

682.102 Obtaining and repaying a loan.

682.103 Applicability of subparts.

Subpart B--General Provisions

682.200 Definitions.

682.201 Eligible borrowers.

682.202 Permissible charges by lenders to borrowers.

682.203 Responsible parties.

682.204 Maximum loan amounts.

682.205 Disclosure requirements for lenders.

682.206 Due diligence in making a loan.

682.207 Due diligence in disbursing a loan.

682.208 Due diligence in servicing a loan.

682.209 Repayment of a loan.

682.210 Deferment.

682.211 Forbearance.

682.212 Prohibited transactions.

682.213 Prohibition against the use of the Rule of 78s.

682.214 Compliance with equal credit opportunity requirements.

682.215 Federal Stafford Loan forgiveness demonstration program.

Subpart C--Federal Payments of Interest and Special Allowance

682.300 Payment of interest benefits on Stafford and Consolidation loans.

682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

682.302 Payment of special allowance on FFEL loans.

682.303 [Reserved]

682.304 Methods for computing interest benefits and special allowance.

682.305 Procedures for payment of interest benefits and special allowance.

Subpart D--Administration of the Federal Family Education Loan Programs by a Guaranty Agency

682.400 Agreements between a guaranty agency and the Secretary.

682.401 Basic program agreement.

682.402 Death, disability, closed school, false certification, and bankruptcy payments.

682.403 Federal advances for claim payments.

682.404 Federal reinsurance agreement.

682.405 Loan rehabilitation agreement.

682.406 Conditions of reinsurance coverage.

682.407 [Removed and Reserved]

682.408 Loan disbursement through an escrow agent.

682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

682.410 Fiscal, administrative, and enforcement requirements.

682.411 Due diligence by lenders in the collection of guaranty agency loans.

682.412 Consequences of the failure of a borrower or student to establish eligibility.

PART 682--FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

682.413 Remedial actions.

682.414 Records, reports, and inspection requirements for guaranty agency programs.

682.415 Special insurance and reinsurance rules.

682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

682.417 Determination of reserve funds or assets to be returned.

682.418 Prohibited uses of reserve fund assets.

Subpart E--Federal Guaranteed Student Loan Programs

682.500 Circumstances under which loans may be guaranteed by the Secretary.

682.501 Extent of Federal guarantee under the Federal GSL programs.

682.502 The application to be a lender.

682.503 The guarantee agreement.

682.504 Issuance of Federal loan guarantees.

682.505 Insurance premium.

682.506 Limitations on maximum loan amounts.

682.507 Due diligence in collecting a loan.

682.508 Assignment of a loan.

682.509 Special conditions for filing a claim.

682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

682.511 Procedures for filing a claim.

682.512 Determination of amount payable on a claim.

682.513 Factors affecting coverage of a loan under the loan guarantee.

682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

Subpart F--Requirements, Standards, and Payments for Participating Schools

682.600 [Removed and Reserved]

682.601 Rules for a school that makes or originates loans.

682.602 [Removed and Reserved]

682.603 Certification by a participating school in connection with a loan application.

682.604 Processing the borrower's loan proceeds and counseling borrowers.

682.605 Determining the date of a student's withdrawal.

682.606 [Removed and Reserved]

682.607 Payment of a refund to a lender.

682.608 Termination of a school's lending eligibility.

682.609 Remedial actions.

682.610 Administrative and fiscal requirements for participating schools.

682.611 Foreign schools.

Subpart G--Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

682.700 Purpose and scope.

682.701 Definitions of terms used in this subpart.

682.702 Effect on participation.

682.703 Informal compliance procedure.

682.704 Emergency action.

682.705 Suspension proceedings.

682.706 Limitation or termination proceedings.

682.707 Appeals in a limitation or termination proceeding.

682.708 Evidence of mailing and receipt dates.

682.709 Reimbursements, refunds, and offsets.

682.710 Removal of limitation.

682.711 Reinstatement after termination.

682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

Subpart H--Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

682.801 Provisions required in Plan.

682.802 Submission of Plan for approval--required documentation.

682.803 Amendments to Plan for Doing Business.

682.804 Failure to comply with Plan for Doing Business.

682.805 Sanctions for material misrepresentation.

682.806-682.829 [Reserved]

682.830 Audit standards.

682.831-682.839 [Reserved]

682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

Appendix A [Removed and Reserved]

Appendix B--Student Status Confirmation Report

Appendix C--Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Appendix D--Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interests Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88-G-138]

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

Subpart A--Purpose and Scope

Sec. 682.100 The Federal Family Education Loan programs.

(a) This part governs the following four programs collectively referred to in these regulations as "the Federal Family Education Loan (FFEL) programs," in which lenders use their own funds to make loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools:

(1) The Federal Stafford Loan (Stafford) Program, which encourages making loans to undergraduate, graduate, and professional students.

(2) The Federal Supplemental Loans for Students (SLS) Program, as in effect for periods of enrollment beginning prior to July 1, 1994, which encourages making loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The Federal PLUS (PLUS) Program, which encourages making loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students.

(4) The Federal Consolidation Loan Program (Consolidation Loan Program), which encourages making loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received while they were students, under the Federal Insured Student Loan (FISL), Stafford loan, SLS, ALAS (as in effect before October 17, 1986), PLUS, and Perkins Loan programs, the Health Professions Student Loan (HPSL) Program authorized by subpart II of part A of Title VII of the Public Health Services Act, Health Education Assistance Loans (HEAL) authorized by subpart I of Part A of Title VII of the Health Services Act, and Nursing Student Loan Program loans authorized by subpart II of part B of title VIII of the Public Health Service Act.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guaranty agency guarantees a lender against losses due to default by the borrower on a FFEL loan. If the guaranty agency meets certain Federal requirements, the guaranty agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses--

(A) Within the Stafford Loan Program, on loans made under Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program; and

(D) Within the Consolidation Loan Program, on loans made under the Federal Consolidation Loan Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section collectively are referred to in these regulations as the "Federal Guaranteed Student Loan (GSL) programs."

(iii) The Federal GSL programs are authorized to operate in States not served by a guaranty agency program. In addition, the FISL and Federal SLS programs are authorized, under limited circumstances, to operate in States in which a guaranty agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1701 to 1087-2)

Note: (a)(2) and (a)(3) amended June 28, 1994, effective July 1, 1995. (a)(4) amended November 29, 1994, effective July 1, 1995.

Sec. 682.101 Participation in the FFEL programs.

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Eligible educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools may participate as schools, enabling an eligible student or his or her parents to obtain a loan to pay for the student's cost of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford Loan and, prior to July 1, 1994, the SLS program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program. Borrowers with outstanding Stafford, SLS, FISL, Perkins, HPSL, HEAL, ALAS, PLUS, or Nursing Student Loan Program loans, or married couples each of whom have eligible loans under these programs may borrow under the Consolidation Loan Program.

(Authority: 20 U.S.C. 1071 to 1087-2)

Note: (c) amended November 29, 1994, effective July 1, 1995.

Sec. 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(b) *SLS loan application.* Generally, to obtain an SLS loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(c) *PLUS loan application.* Generally, to obtain a PLUS loan, both the student and the parent complete an application and submit it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(d) *Consolidation loan application.* Generally, to obtain a Consolidation loan, a borrower completes an application and submits it to a lender holding at least one of the borrower's loans to be consolidated. If all the holders of loans selected for consolidation by the borrower refuse to make a Consolidation loan, the borrower may submit the application to any other lender participating in the Consolidation Loan Program. In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation. In the case of a married couple seeking a Consolidation loan, only the holders for one of the applicants must be contacted for consolidation. If a lender decides to make the loan, the lender obtains a loan guarantee from a guaranty agency or the Secretary.

(e) *Repaying a loan*--(1) *General.* Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is canceled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy. The borrower's obligation to repay a PLUS loan is cancelled if the student, on whose behalf the parent borrowed, dies. The borrower's obligation to repay all or a portion of his or her loan may be cancelled if the borrower is unable to complete his or her program of study because the school closed or the borrower's eligibility to borrow was falsely certified by the school. The obligation to repay all or a portion of a loan may be forgiven for borrowers who enter certain areas of the teaching or nursing professions or perform certain kinds of national or community service.

(2) *Stafford loan repayment.* Generally, a borrower is not required to make any principal payments on a Stafford loan during the time the borrower is in school. In most cases, the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan.

(3) *SLS loan repayment.* Generally, the repayment period for an SLS loan begins immediately on the day of the last disbursement of the loan proceeds by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower, but who has not yet entered repayment on the Stafford loan, requests that commencement of repayment on the SLS loan be deferred until the borrower's grace period on the Stafford loan expires.

(4) *PLUS loan repayment.* Generally, the repayment period for a PLUS loan begins on the day the loan is disbursed by the lender. The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) *Consolidation loan repayment.* Generally, the repayment period for a Consolidation loan begins on the day the loan is disbursed. The first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) *Deferment of repayment.* Repayment of principal on a FFEL program loan may be deferred under the circumstances described in 682.210.

(7) *Default.* If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087-2)

Note: (d) and (e) amended May 17, 1994, effective July 1, 1994. (d) and (e) further amended June 28, 1994, effective July 1, 1995.

Sec. 682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the FFEL programs.

(b) The administration of the FFEL programs by a guaranty agency is subject to subparts C, D, F, and G of this part.

(c) The Federal FFEL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the FFEL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087-2)

Subpart B--General Provisions

Sec. 682.200 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
College Work-Study (CWS) Program
Consolidation Loan Program
Dependent student
Eligible program
Eligible student
Enrolled
Guaranteed Student Loan (GSL) Program
Independent student
National of the United States (Referred to as U.S. Citizen or National in 34 CFR 668.2)
Payment period
Pell Grant Program
Perkins Loan Program
PLUS Program
State
State Student Incentive Grant (SSIG) Program
Supplemental Educational Opportunity Grant (SEOG) Program
Supplemental Loans for Students (SLS) Program

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Institution of higher education (600.4)
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary
Vocational school

(b) The following definitions also apply to this part:

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq.

Actual interest rate. The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of FFEL loans. The term "Authority" also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a FFEL loan is made.

Co-maker. One of two parents who are joint borrowers on a PLUS loan or one of two individuals who are joint borrowers on a Consolidation loan, each of whom are eligible and who are jointly and severally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, or joint borrowers on a PLUS or Consolidation loan, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary or guaranty agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for--

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of an individual check, a master check that represents loan amounts for more than one borrower, or by electronic funds transfer.

Disposable income. That part of a borrower's compensation from an employer and other income from any source that remains after the deduction of any amounts required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited, to Federal and State taxes, Social Security contributions, and wage garnishment payments.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. Any guaranty agency or other eligible lender that receives the proceeds of a FFEL program loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated financial assistance. (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as, scholarships, grants, financial need-based employment, or loans, including but not limited to--

(i) Veterans' educational benefits paid under Chapters 30, 31, 32, and 35 of Title 38 of the United States Code;

(ii) Educational benefits paid under Chapters 106 and 107 of Title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of Title 10 and Chapter 2 of Title 37 of the United States Code;

(iv) Benefits paid under Pub. L. 97-376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Pub. L. 96-342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of a Federal Stafford, Unsubsidized Stafford and Federal PLUS loan.

(2) The estimated amount of assistance does not include--

(i) Those amounts used to replace the expected family contribution, including--

(A) Unsubsidized and nonsubsidized Stafford loan amounts for which interest benefits are not payable.

(B) SLS and PLUS loan amounts; or

(C) Private and state-sponsored loan programs; and

(ii) Perkins loan and College Work-Study funds that the school determines the student has declined.

Expected family contribution. The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Loan Program.

Federal Insured Student Loan Program. The loan program authorized by Title IV-B of the Act under which the Secretary directly insures lenders against losses.

Foreign school. A school not located in a State.

Full-time student. (1) A student enrolled in an eligible institution (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload, as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research, or special studies,whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours per semester or quarter, respectively, of instruction, or its equivalent.

Grace period. The period that begins on the day after a Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins. See also "Post-deferment grace period." For an SLS borrower who also has a Federal Stafford loan on which the borrower has not yet entered repayment, the grace period is an equivalent period after the borrower ceases to be enrolled as at least a half-time student at an eligible institution.

Graduate or professional student. A student who, for a period of enrollment--

(1) Is enrolled in a program above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three academic years of full-time study at an institution of higher education, either before entrance into the program or as part of the program itself; and

(3) Is not receiving aid under Title IV of the Act as an undergraduate student for the same period of enrollment.

Guaranty agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Half-time student. A student who is enrolled in an eligible institution and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Holder. An eligible lender in possession of a FFEL program loan note that is payable to, or has been assigned to the lender, including a Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender.

Legal guardian. An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)-(5) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union--

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

(4) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(5) The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has--

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or other party to secure applicants for FFEL loans;

(ii) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent who previously has received a FFEL loan from the lender;

(iii) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising with respect to its FFEL program loan activities.

(5) The term eligible lender does not include any lender that--

(i) Is debarred or suspended, or any of whose principals or affiliates (as those terms are defined in 34 CFR part 85) is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4;

(ii) Is an affiliate, as defined in 34 CFR part 85, of any person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; or

(iii) Employs a person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, in a capacity that involves the administration or receipt of FFEL Program funds.

National credit bureau. A credit bureau with a service area that encompasses more than a single region of the country.

Nonsubsidized Stafford loan. A Stafford loan made prior to October 1, 1992 that does not qualify for interest benefits under Sec. 682.301(b) or special allowance payments under Sec. 682.302.

Origination relationship. A special business relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making FFEL program loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that the lender is required to pay the Secretary to help defray the Secretary's costs of subsidizing the loan. The lender may pass this fee on to the Stafford loan borrower. The lender must pass this fee on to the SLS or PLUS borrower.

Participating school. A school that has in effect a current agreement with the Secretary under 682.600.

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a bona fide academic term established by the school for which institutional charges are generally assessed (e.g., semester, trimester, quarter, length of the student's program or academic year). The period of enrollment is also referred to as the loan period.

Post-deferment grace period. For a loan made prior to October 1, 1981, a single period of six consecutive months beginning on the day following the last day of an authorized deferment period.

Repayment period. (1) For a Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from the date the first payment of principal is due from the borrower, exclusive of any period of deferment or forbearance.

(2) For unsubsidized Stafford loans, the period that begins on the day after the expiration of the applicable grace period that follows after the student ceases to be enrolled on at least a half-time basis and ending no later than 10 years from

that date, exclusive of any period of deferment or forbearance. However, payments of interest are the responsibility of the borrower during the in-school and grace period, but may be capitalized by the lender.

(3) For SLS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. The first payment of principal is due within 60 days after the loan is fully disbursed unless a borrower who is also a Stafford loan borrower but who, has not yet entered repayment on the Stafford loan requests that commencement of repayment on the SLS loan be delayed until the borrower's grace period on the Stafford loan expires. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan. The borrower is responsible for paying interest on the loan during the grace period and periods of deferment, but the interest may be capitalized by the lender.

(4) For Federal PLUS loans, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, on the date the last disbursement is made and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance. Interest on the loan accrues and is due and payable from the date of the first disbursement of the loan.

(5) For Federal Consolidation loans, the period that begins on the date the loan is disbursed and ends no later than 10, 12, 15, 20, 25, or 30 years from that date depending upon the sum of the amount of the Consolidation loan, and the unpaid balance on other student loans, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. (1) For purposes of regaining eligibility under section 428F(b) of the HEA, the making of six (6) consecutive voluntary full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For purposes of consolidating a defaulted loan under 34 CFR 682.201(c)(1)(iii)(C), the making of three (3) consecutive voluntary full monthly payments on a defaulted loan.

(3) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. On-time means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date.

School. (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Stafford, SLS, or PLUS loans for attendance at the institution. For this purpose–

(i) A commissioned salesperson is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student acceptances for enrollment, student enrollments, or student retention; and

(ii) Promote the availability means--

(A) Provide a prospective or enrolled student with FFEL loan application forms, or names of eligible lenders;

(B) Provide other information relating to the FFEL programs to a prospective or enrolled student in order to encourage the student to finance his or her education with a FFEL loan; or

(C) Otherwise use the availability of FFEL loans as a recruiting or retention tool.

(4) The term does not include any educational institution that has a default rate in excess of the threshold rates established under section 435(a)(2) of the Act.

(5) For purposes of an in-school deferment, the term includes an eligible institution, whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or, a similar agreement with a guaranty agency.

Stafford Loan Program. The loan program authorized by Title IV-B of the Act which encourages the making of subsidized and unsubsidized loans to undergraduate, graduate, and professional students and is one of the Federal Family Education Loan programs.

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary, or a similar agreement with a guaranty agency.

Subsidized Stafford loan. A loan authorized under section 428(b) of the Act for borrowers who qualify for interest benefits under Sec. 682.301(b).

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Third-party servicer. Any State or private, profit or nonprofit organization or any individual that enters into a contract with a lender or guaranty agency to administer, through either manual or automated processing, any aspect of the lender's or guaranty agency's FFEL programs required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA that governs the FFEL programs, including, any applicable function described in the definition of third-party servicer in 34 CFR part 668; originating, guaranteeing, monitoring, processing, servicing, or collecting loans; claims submission; or billing for interest benefits and special allowance.

Totally and permanently disabled. The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student. A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

Unsubsidized Stafford loan. A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under Sec. 682.301(b).

Write-off. Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087-2, 1088-1098, 1141; E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235))

Note: Section amended April 29, 1994, effective July 1, 1994. (b) amended May 17, 1994, effective July 1, 1994. (b) further amended June 28, 1994, effective July 1, 1995. "Estimated Cost of Attendance" removed and "Estimated financial assistance" amended November 29, 1994, effective July 1, 1995. "Satisfactory repayment arrangement" amended December 1, 1995, effective July 1, 1996. (a)(1) introductory clause amended and "Payment period" added to (a)(1) November 29, 1996, effective July 1, 1997.

Sec. 682.201 Eligible borrowers.

(a) *Student borrower.* Except for a refinanced SLS/PLUS loan made under Sec. 682.209(e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an unsubsidized Stafford loan, if the student who is enrolled or accepted for enrollment on at least a half-time basis at a participating school meets the requirements for an eligible student under 34 CFR part 668, and--

(1) In the case of an undergraduate student who seeks a Stafford loan or unsubsidized Stafford loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must have received a determination of need for a subsidized Stafford loan, and if determined to have need in excess of $200, have filed an application with a lender for a subsidized Stafford loan;

(3) For purposes of a dependent undergraduate student's eligibility for an additional unsubsidized Stafford loan amount, as described at Sec. 682.204(d), is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount on which there has been a total cessation of collection activity, including all principal and interest that has accrued on that amount up to the date of reaffirmation.

(ii) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower--

(A) Signing a new promissory note or repayment schedule; or

(B) Making a payment on the loan.

(5)(i) In the case of a borrower whose previous loan was canceled due to total and permanent disability, the student must--

(A) Obtain a certification from a physician that the borrower is able to engage in substantial gainful activity; and

(B) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be canceled in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates;

(ii) Signs a statement acknowledging that any new FFEL loan the borrower receives cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(6) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR Part 668.7(b).

(7) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) *Parent borrower.* (1)A parent borrower, is eligible to receive a PLUS Program loan, other than a loan made under Sec. 682.209(e), if the parent--

(i) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR Part 668;

(ii) Provides his or her and the student's social security number;

(iii) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(iv) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(v) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668;

(vi) Meets the requirement of paragraphs (a)(4) and (a)(5) of this section,

(vii)(A) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history.

(B) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau. The credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan is intended.

(C) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if--

(1) The applicant is considered 90 or more days delinquent on the repayment of a debt;

(2) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit report.

(D) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(E) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(F) The lender must retain documentation demonstrating its basis for determining that extenuating circumstances existed. This documentation may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(viii) Obtains an endorser who has been determined not to have an adverse credit history as provided in paragraph (b)(1)(vii)(C) of this section.

(2) For purposes of paragraph (b)(1) of this section, a "parent" includes the individuals described in the definition of "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been

taken into account when calculating a dependent student's expected family contribution.

(c) *Consolidation Program Borrower.* (1) An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual--

(i) For a Consolidation loan made on or after January 1, 1993 but prior to July 1, 1994, has an outstanding indebtedness of not less than $7,500 that are eligible for consolidation under Sec. 682.100;

(ii) Has ceased, or, in the case of a PLUS borrower, the dependent student on whose behalf the parent is borrowing has ceased, at least half-time enrollment at a school;

(iii) Is, on the loans being consolidated--

(A) In a grace period preceding repayment on the loans being consolidated;

(B) Is in repayment status; or

(C) In a default status and has either made satisfactory repayment arrangements as defined in section 682.200(b)(2) or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in Sec. 682.209(a)(6)(viii).

(iv) Certifies that no other application for a Consolidation loan is pending;

(v) Agrees to notify the holder of any changes in address; and

(vi) Certifies that the lender holds an outstanding loan of the borrower that is being consolidated or that the borrower has unsuccessfully sought a loan from the holders of the outstanding loans and was unable to secure a Consolidation loan from the holder.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each--

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Meets the requirements of paragraph (c)(1) of this section, and only one must have met the requirements of paragraph (c)(1)(vi) of this section.

(3) To be eligible to receive a Consolidation loan, in the case of a student, parent, or Consolidation loan borrower who is currently in default on an FFEL Program loan, the borrower must have made satisfactory repayment arrangements.

(4) A borrower's eligibility to receive a Consolidation loan terminates upon receipt of a Consolidation loan except--

(i) With respect to student loans received after the date the Consolidation loan is made; or

(ii) Eligible loans received prior to the date the Consolidation loan was made can be added to the Consolidation loan during the 180-day period after the making of the Consolidation loan.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1091)

Note: Section amended May 17, 1994, effective July 1, 1994. (a)(2), (b) introductory text, (b)(1), and (c) amended and (b)(7) added June 28, 1994, effective July 1, 1995. (a)(4)(i), (a)(5)(i), and (a)(6) amended and (b)(8) added November 29, 1994, effective July 1, 1995. (c)(1)(iii)(C) amended December 1, 1995, effective July 1, 1996. (b)(1) redesignated and (b)(2) added December 1, 1995, effective July 1, 1996. (a) introductory language, (a)(1), (a)(2), and (a)(3) revised November 28, 1997, effective July 1, 1998.

Sec. 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest.* The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) of this section.

(1) *Stafford Loan Program.* (i) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on any FFEL Program loan, and the first disbursement is made--

(A) Prior to October 1, 1992, for a loan covering a period of instruction beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter; or

(B) On or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of--

(1) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(2) 9 percent.

(iii) For a Stafford loan for which the first disbursement is made before October 1, 1992--

(A) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning on or after July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement is made on or after October 1, 1992, if the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(2) *PLUS Program.* (i) For a combined repayment schedule under Sec. 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under Sec. 682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of--

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of--

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 10 percent.

(3) *SLS Program.* (i) For a combined repayment schedule under Sec. 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under 682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of--

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of--

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 11 percent.

(4) *Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of--

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

(5) *Actual interest rates under the Stafford loan, SLS, PLUS, and Consolidation Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1)-(4) of this section.

(6) *Refund of excess interest paid on Stafford loans.* (i) For a loan with an applicable interest rate of 10 percent made prior to July 23, 1992, and for a loan with an applicable interest rate of 10 percent made from July 23, 1992 through September 30, 1992, to a borrower with no outstanding FFEL Program loans--

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall calculate an adjustment and credit the adjustment as specified under paragraph (a)(6)(i)(B) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of the adjustment for a calendar quarter is equal to--

(1) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(2) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(3) Divided by 4;

(B) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall credit any amounts computed under paragraph (a)(6)(i)(A) of this section to--

(1) The Secretary, for amounts paid during any period in which the borrower is eligible for interest benefits;

(2) The borrower's account to reduce the outstanding principal balance as of the date the holder adjusts the borrower's account, provided that the borrower's account was not more than 30 days delinquent on that December 31; or

(3) The Secretary, for a borrower who on the last day of the calendar year is delinquent for more than 30 days.

(ii) For a fixed interest rate loan made on or after July 23, 1992 to a borrower with an outstanding FFEL Program loan--

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the lender shall calculate an adjustment and credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(6)(ii)(C) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to--

(1) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(2) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(3) Divided by 4;

(B) For any quarter or portion thereof that the Secretary was obligated to pay interest subsidy on behalf of the borrower, the holder of the loan shall refund to the Secretary, no later than the end of the following quarter, any excess interest calculated in accordance with paragraph (a)(6)(ii)(A) of this section;

(C) For any other quarter, the holder of the loan shall, within 30 days of the end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated under paragraph (a)(6)(ii)(A) of this section, provided that the borrower's account was not more than 30 days delinquent as of December 31;

(D) For a borrower who on the last day of the calendar year is delinquent for more than 30 days, any excess interest calculated shall be refunded to the Secretary; and

(E) Notwithstanding paragraphs (a)(6)(ii)(B), (C) and (D) of this section, if the loan was disbursed during a quarter, the amount of any adjustment refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

(7) *Conversion to Variable Rate.* (i) A lender or holder shall convert the interest rate on a loan under paragraphs (a)(6)(i) or (ii) of this section to a variable rate.

(ii) The applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 preceding each 12-month period is equal to the sum of--

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to June 1; and

(B) 3.25 percent in the case of a loan described in paragraph (a)(6)(i) of this section or 3.10 percent in the case of a loan described in paragraph (a)(6)(ii) of this section.

(iii)(A) In connection with the conversion specified in paragraph (a)(6)(ii) of this section for any period prior to the conversion for which a rebate has not been provided under paragraph (a)(6) of this section, a lender or holder shall convert the interest rate to a variable rate.

(B) The interest rate for each period shall be reset quarterly and the applicable interest rate for the quarter or portion shall equal the sum of--

(1) The average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period; and

(2) 3.25 percent in the case of loans as specified under paragraph (a)(6)(i) of this section or 3.10 percent in the

case of loans as specified under paragraph (a)(6)(ii) of this section.

(iv)(A) The holder of a loan being converted under paragraph (a)(7)(iii)(A) of this section shall complete such conversion on or before January 1, 1995.

(B) The holder shall, not later than 30 days prior to the conversion, provide the borrower with--

(1) A notice informing the borrower that the loan is being converted to a variable interest rate;

(2) A description of the rate to the borrower;

(3) The current interest rate; and

(4) An explanation that the variable rate will provide a substantially equivalent benefit as the adjustment otherwise provided under paragraph (a)(6) of this section.

(v) The notice may be provided as part of the disclosure requirement as specified under Sec. 682.205.

(vi) The interest rate as calculated under this paragraph may not exceed the maximum interest rate applicable to the loan prior to the conversion.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with paragraph (b)(2) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest payable by the borrower that has accrued--

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly or quarterly basis or, with the borrower's written consent, capitalize on a quarterly basis interest that has accrued during periods in which the borrower--

(i) is pursuing a full-time course of study at an eligible institution;

(ii) is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a FFEL loan;

(iii) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(5) For all borrowers who are in a period of deferment, a required medical or dental internship forbearance, or the in-school or grace period on a nonsubsidized Stafford loan and have agreed to monthly or quarterly payments of interest, the lender may capitalize past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.* A lender--

(1) May charge a borrower an origination fee on a subsidized Stafford loan not to exceed the maximum rate specified by federal statute;

(2) Shall charge a borrower an origination fee on an unsubsidized Stafford loan of 3 percent of the principal amount of the loan;

(3) Shall charge a borrower an origination fee on an SLS or a PLUS loan of 3 percent of the principal amount of the loan;

(4) Shall deduct a pro rata portion of the fee (if charged) from each disbursement; and

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of the loan--

(i) That is returned by a school to a lender in order to comply with the Act or with applicable regulations;

(ii) That is repaid or returned within 120 days of disbursement, unless--

(A) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with Sec. 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(iii) For which a loan check has not been negotiated within 120 days of disbursement; or

(iv) For which loan proceeds disbursed by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school within 120 days of disbursement.

(d) *Insurance Premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to 1 percent of the principal amount of the loan, if that charge is provided for in the promissory note.

(e) *Administrative charge for a refinanced PLUS or SLS Loan.* A lender may charge a borrower up to $100 to cover the administrative costs of making a loan to a borrower under 682.209(e) for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) *Late charge.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 15 days after it is due.

(g) *Collection charges.* (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to--

(i) Attorney's fees;

(ii) Court costs; and

(iii) Telegrams.

(2) The costs referred to in paragraph (g)(1) of this section may not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1087-1, 1091a)

Note: (a), (c), and (d) amended April 29, 1994, effective June 13, 1994. (a)(6) and (a)(7) added November 30, 1994, effective July 1, 1995. (f)(2) revised November 27, 1996, effective July 1, 1997. (c)(5) revised November 28, 1997, effective July 1, 1998.

Sec. 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guaranty agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guaranty agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

Sec. 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of a dependent undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program and the Direct Stafford Loan Program may not exceed--

(i) $2,625 for a program whose length is at least a full academic year in length;

(ii) $1,750 for a program whose length is at least two-thirds but less than a full academic year in length; and

(iii) $875 for a program whose length is at least one-third but less than two-thirds of an academic year length.

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may

borrow for any academic year of study under the Stafford Loan Program may not exceed--

(i) $3,500 for a program whose length is at least a full academic year in length; or

(ii) For a Stafford loan first disbursed on or after July 1, 1994 for a period of enrollment beginning on or after July 1, 1994, if the student is enrolled in a program, with less than a full academic year remaining, a prorated amount that bears the same ratio to $3,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a student who has successfully completed the first and second year of a program of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for academic year of study under the Stafford Loan and Direct Stafford Loan Program may not exceed--

(i) $5,500 for a program whose length is at least an academic year in length;

(ii) For a Stafford loan first disbursed on or after July 1, 1994 for a period of enrollment beginning on or after July 1, 1994, if the student is enrolled in a program with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(4) In the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for an academic year of study may not exceed the amount in paragraph (a)(3)(i) of this section.

(5) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Stafford Loan Program, in combination with any amount borrowed under the Direct Stafford Loan Program, may not exceed $8,500.

(b) *Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Stafford Loan Program and loans received under the Direct Stafford Loan Program may not exceed--

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,000, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Unsubsidized Stafford Loan Program.* In the case of a dependent graduate student, the total amount the student may borrow for any period of study for the Unsubsidized Stafford Loan Program and Direct Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Stafford Loan Program.

(d) *Additional eligibility under the Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraph (b) of this section, an independent undergraduate student, graduate or professional student, or certain dependent undergraduate students may borrow additional amounts under the Unsubsidized Stafford Loan Program. The additional amount that such a student may borrow under the Unsubsidized Stafford Loan Program, in combination with Unsubsidized Stafford loans, for any academic year of study--

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed--

(i) $4,000 for enrollment in a program whose length is at least a full academic year in length;

(ii) $2,500 for enrollment in a program whose length is at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program whose length is at least one-third but less than two-thirds of an academic year in length;

(2) In the case of a student who has successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program, may not exceed--

(i) $5,000 for enrollment in a program whose length is at least a full academic year;

(ii) If the student is enrolled in a program with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,000 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year;

(3) In the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for an academic year under the Unsubsidized Stafford Loan and Direct Unsubsidized Stafford Loan Program may not exceed the amount in paragraph (d)(2)(i) of this section; and

(4) In the case of a graduate or professional student, may not exceed $10,000.

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(e) *Unsubsidized Stafford Loan Program aggregate limits.* The total unpaid principal amount of Stafford Loans, Direct Stafford Loans, Unsubsidized Stafford Loans, Direct Unsubsidized Stafford Loans and SLS Loans, may not exceed--

(1) $46,000 for an undergraduate student; and

(2) $138,500 for a graduate or professional student.

(f) *SLS Program annual limit.* (1) In the case of a loan for which the first disbursement is made prior to July 1, 1993, the total amount of all SLS loans that a student may borrow for any academic year may not exceed $4,000 or, if the student is entering or is enrolled in a program of undergraduate education that is less than one academic year in length and the student's SLS loan application is certified pursuant to Sec. 682.603 by the school on or after January 1, 1990--

(i) $2,500 for a student enrolled in a program whose length is at least two-thirds of an academic year but less than a full academic year in length;

(ii) $1,500 for a student enrolled in a program whose length is less than two-thirds of an academic year in length; and

(iii) $0 for a student enrolled in a program whose length is less than one-third of an academic year in length.

(2) In the case of a loan for which a first disbursement is made on or after July 1, 1993, the total amount a student may borrow for an academic year under the SLS program--

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed--

(A) $4,000 for enrollment in a program whose length is at least a full academic year in length;

(B) $2,500 for enrollment in a program whose length is at least two-thirds but less than a full academic year in length;

(C) $1,500 for enrollment in a program whose length is least one-third but less than two-thirds of an academic year in length;

(ii) Except as provided in paragraph (f)(4) of this section, in the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program, may not exceed--

(A) $5,000 for enrollment in a program whose length is at least a full academic year;

(B) $3,325 for enrollment in a program whose length is at least two-thirds of an academic year but less than a full academic year in length; and

(C) $1,675 for enrollment in a program whose length is at least one-third of an academic year but less than two-thirds of an academic year; and

(iii) In the case of a graduate or professional student, may not exceed $10,000.

(4) For a period of enrollment beginning after October 1, 1993, but prior to July 1, 1994 for which the first disbursement is made prior to July 1, 1994, in the case of a student who has successfully completed the first and second years of a program but has not successfully completed the remainder of a program of undergraduate education--

(i) $5,000; or

(ii) If the student is enrolled in a program, the remainder of which is less than a full academic year, the maximum annual amount that the study may receive may not exceed the amount that bears the same ratio to the amount in paragraph (f)(4)(i) of this section as the remainder measured in semester, trimester, quarter, or clock hours bears to one academic year.

(g) *SLS Program aggregate limit.* The total unpaid principal amount of SLS Program loans made to--

(1) An undergraduate student may not exceed--

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $23,000, for loans for which the first disbursement was made on or after July 1, 1993; and

(2) A graduate student may not exceed--

(i) $20,000, for loans for which the first disbursement is made prior to July 1, 1993; or

(ii) $73,000, for loans for which the first disbursement was made on or after July 1, 1993 including loans for undergraduate study.

(h) *PLUS Program annual limit.* The total amount of all PLUS Program loans that parents may borrow on behalf of each dependent student for any academic year of study may borrow for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

343

(i) *Minimum loan interval.* The annual loan limits applicable to a student apply to the length of the school's academic year.

(j) *Treatment of Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford loan, Unsubsidized Stafford loan, Direct Stafford loan, Direct Unsubsidized loan, SLS, PLUS, Perkins Loan, or HPSL program must equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(k) *Maximum loan amounts.* In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less--

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(l) In determining a Stafford loan amount in accordance with Sec. 682.204 (a), (c) and (d), the school must use the definition of academic year in 34 CFR 668.2.

(Authority: 20 U.S.C. 1075, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1089)

Note: Section amended June 28, 1994, effective July 1, 1995.

Sec. 682.205 Disclosure requirements for lenders.

(a) *Initial disclosure statement.* (1) Except in the case of a Consolidation loan, a lender shall disclose the information described in paragraph (a)(2) of this section to a borrower in writing before or at the time of the first disbursement on a FFEL program loan. The written information given to the borrower must prominently and clearly display, in bold print, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) The lender shall provide the borrower with--

(i) The lender's name, the address to which correspondence with the lender and payments should be sent, and a statement that the lender may sell or transfer the loan to another party, in which case the address and identity of the party to which correspondence and payments should be sent may change;

(ii) The principal amount of the loan;

(iii) The amount of any charges, including the origination fee if applicable, and the insurance premium, to be collected by the lender before or at the time of each disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower;

(iv) The actual interest rate;

(v) The annual and aggregate maximum amounts that may be borrowed;

(vi) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau;

(vii) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(viii) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(x) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xi) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xii) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171;

(xiii) The definition of "default" found in Sec. 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a national credit bureau, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that the borrower's wages will be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs;

(xiv) An explanation of the possible effects of accepting the loan on the student's eligibility for other forms of student financial assistance;

(xv) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(xvi) In the case of a Stafford or SLS loan, other than an SLS loan made under Sec. 682.209 (e) or (f) or a loan made to a borrower attending a school that is not in a State, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower; and

(xvii) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of, or information that will allow the borrower to estimate, the projected monthly payment amount based on that cumulative outstanding balance.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender shall provide the borrower with a separate statement, written in plain English, at or prior to the time of the first disbursement, that--

(1) Summarizes the rights and responsibilities of the borrower with respect to the loan; and

(2) Indicates the consequences to the borrower of defaulting on the loan described in paragraph (a)(2)(xiii) of this section.

(c) *Disclosure of repayment information.* (1) The lender shall disclose the information described in paragraph (c)(2) of this section in a written statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Stafford or SLS loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 240 days before the first payment on the loan is due from the borrower. In the case of a FISL loan, the lender shall make the disclosures during the grace period. If the borrower enters the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with--

(i) The lender's name and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date the repayment period is to begin;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(d) *Exception to disclosure requirement.* In the case of an SLS or PLUS loan, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, in lieu of that disclosure, provides the borrower with sample projections of monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only and capitalized interest.

(e) *Borrower may not be charged for disclosures.* The lender shall provide the information required to be disclosed by paragraphs (a), (b), and (c) of this section at no cost to the borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1083(a))

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (c) and (d) amended May 17, 1994, effective July 1, 1994. OMB control number republished June 12, 1995, effective July 1, 1995.

Sec. 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note.

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school in regard to that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school

in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely on the information provided on the application form or data electronically transmitted to the lender by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower's eligibility for a loan.

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, the lender must review the data on the student's cost of attendance and estimated financial assistance that is provided by the school. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of--

(i) The student's estimated financial assistance for the period of enrollment for which the loan is intended; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(3) A lender may not approve a loan for more than the borrower requests, the student's unmet financial need, or the maximum established by Sec. 682.204, whichever is less.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) Without the guarantor's prior approval, a lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor.

(3) The lender shall give the borrower and any endorser or co-maker a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISL, SLS or Federal PLUS loan must be made without security or endorsement.

(2) A Federal PLUS Program loan and Federal Consolidation Program Loan may be made to two eligible borrowers who agree to be jointly and severally liable for repayment of the loan as co-makers.

(3) A Federal Consolidation loan may be made to two eligible spouses provided both borrowers agree to be jointly and severally liable for repayment of the loan as co-makers.

(f) *Additional requirement for Consolidation loans.* (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that--

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1083, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993. (e) amended May 17, 1994, effective July 1, 1994. (c)(2) and (e)(2) amended June 28, 1994, effective July 1, 1995.

Sec. 682.207 Due diligence in disbursing a loan.

(a)(1) This section prescribes procedures for lenders to follow in disbursing Stafford, SLS, and PLUS loans, other than a refinanced SLS or PLUS Program loan made under Sec. 682.209 (e) or (f). With respect to FISL, Federal SLS, and Federal PLUS loans, references to the "guaranty agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1)(ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to 682.408. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender--

(i)(A) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guaranty agency, except with the agency's prior approval; and

(B) Must disburse a Stafford or SLS loan in accordance with the disbursement schedule provided by the school;

(ii) Shall disburse loan proceeds by--

(A) A check that is made payable to the borrower, or, if required by the guarantor or lender, is made co-payable to the borrower and the school for attendance at which the loan is intended, and requires the personal endorsement or other written certification of the borrower in order to be cashed or deposited in an account of the borrower at a financial institution;

(B) If authorized by the guarantor, electronic funds transfer to a account maintained in accordance with Sec. 668.163 by the school as trustee for the lender, the guaranty agency, the Secretary, and the borrower, that requires the written approval of the borrower that is secured and retained by the school for each FFEL program loan for which funds are released from the account. A disbursement made by electronic funds transfer must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement; or

(C) If the school and the lender agree, a master check from the lender to the eligible institution to a account maintained in accordance with Sec. 668.163 by the school as trustee for the lender. A disbursement made by a master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement;

(iii) May not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and, in no case without the Secretary's prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender;

(v) Shall disburse--

(A) Except as provided in paragraph (b)(1)(v)(C)(1) and (D) of this section, directly to the school;

(B) In the case of a Federal PLUS loan--

(1) By electronic funds transfer or master check from the lender to the eligible institution to a account maintained in accordance with Sec. 668.163 by the school as trustee for the lender. A disbursement made by electronic funds transfer or master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement and the names and social security numbers of the students on whose behalf the parents are borrowing.

(2) By a check from the lender that is made co-payable to the institution and the parent borrower directly to the eligible institution.

(C) In the case of a student enrolled in a study-abroad program approved for credit at the home institution in which the student is enrolled, if the student requests--

(1) Directly to the student; or

(2) To the home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(D) In the case of a student enrolled in an eligible foreign school, if the student requests--

(1) Directly to the student; or

(2) To the institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(vi) Except as provided in paragraph (d)(2) of this section, may not disburse a second or subsequent disbursement on a Stafford or SLS loan to a student who has ceased to be enrolled.

(2) Except as provided in paragraph (b)(1)(v)(C)(2) of this section, neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower pursuant to the borrower's written authorization under paragraph (b)(1)(ii)(A) of this section.

(c) A lender shall disburse any Stafford or PLUS loan as follows:

(1) Disbursement must be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) Disbursement must be made on a payment period basis in accordance with the disbursement schedule provided by the school.

(4) If one or more scheduled disbursements have elapsed before a lender makes a disbursement and the student is still enrolled, the lender may include in the disbursement loan proceeds for previously scheduled, but unmade, disbursements.

(5) A lender is not required to make more than one disbursement if a school is not in a State.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis.

(2) A disbursement described in paragraph (d)(1) of this section may be made--

(i)(A) Only if the school certified the loan application and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(B) Only if the student completed the first 30 days of his or her program of study if the student was a first-year, first time borrower as described in Sec. 682.604(c)(5) of this section; and

(C) Only if the student graduated or successfully completed the period of enrollment for which the loan was intended, in the case of a second or subsequent disbursement.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with (d)(1) of this section at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (d)(2) amended May 17, 1994, effective July 1, 1994. (b)(1)(v)(A) and (B) amended and (b)(1)(v)(D) added June 28, 1994, effective July 1, 1995. (d)(2)(iii) added November 29, 1994, effective July 1, 1995. (b)(1)(ii) and (b)(1)(v) amended November 30, 1994, effective July 1, 1995. (c) introductory text, (d)(1), and (d)(2)(iii) amended; (c)(4) added December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996. (b)(1)(ii)(B), (b)(1)(ii)(C), (b)(1)(v)(B)(1), (c)(3), (c)(4), and (d) amended and (c)(5) added November 29, 1996, effective July 1, 1997.

Sec. 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b)(1) An eligible lender of a FFEL loan shall report to at least one national credit bureau--

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, within 90 days after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(ii)-(v) of this section within 90 days of its acquisition of the loan.

(c)(1) A lender shall respond within 30 days after receipt to any inquiry from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower is no longer enrolled at an eligible school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in Sec. 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule--

(1) To provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay; or

(2) To provide a single repayment schedule for all FFEL program loans to the borrower held by the lender.

(e)(1) If the assignment of a Stafford, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide, either jointly or separately, a notice to the borrower of--

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments or communications must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) If the assignor and assignee separately provide the notice required by paragraph (e)(1) of this section, each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(3) For purposes of this paragraph, the term "assigned" is defined in Sec. 682.401(b)(15)(ii).

(4) The assignee, or the assignor on behalf of the assignee, shall notify the guaranty agency that guaranteed the loan within 45 days of the date the assignee acquires a legally enforceable right to receive payment from the borrower on the loan of--

(i) The assignment; and

(ii) The name and address of the assignee, and the telephone number of the assignee that can be used to obtain information about the repayment of the loan.

(5) The requirements of this paragraph (e), as to borrower notification, apply if the borrower is in a grace period or has entered the repayment period.

(f)(1) Notwithstanding an error by the school or lender, a lender shall follow the procedures in Sec. 682.412 whenever it receives information that can be substantiated that the borrower, or the student on whose behalf a parent has borrowed, provided false or erroneous information or took actions that caused the student or borrower--

(i) To be ineligible for all or a portion of a loan made under this part;

(ii) To receive a Stafford loan subject to payment of Federal interest benefits as provided under Sec. 682.301, for which he or she was ineligible; or

(iii) To receive loan proceeds that were not paid to the school or repaid to the lender by or on behalf of a registered student who--

(A) The school notifies the lender under 682.604(d)(4) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term "guaranty agency" in Sec. 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(g) If, during a period when the borrower is not delinquent, a lender receives information indicating it does not know the borrower's address, it may commence the skip-tracing activities specified in 682.411(g).

(h) *Notifying the borrower about a servicing change.* If an FFEL Program loan has not been assigned, but there is a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loan, the holder of the loan shall, no later than 45 days after the date of the change, provide notice to the borrower of the name, telephone number, and address of the party to whom subsequent payments or communications must be sent. The requirements of this paragraph apply if the borrower is in a grace period or has entered the repayment period.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (e) amended and (h) added April 29, 1994, effective June 13, 1994. OMB number amended September 7, 1994, effective September 7, 1994.

Sec. 682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2)(i) For a PLUS loan, the repayment period begins on the date of the last disbursement made on the loan. The first payment is due within 60 days after the date the loan is fully disbursed. Interest accrues and is due and payable from the date of the first disbursement of the loan.

(ii) For an SLS loan, the repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Interest accrues and is due and payable from the date of the first disbursement of the loan. Except as provided in paragraph (a)(2)(iii) of this section the first payment is due within 60 days after the date the loan is fully disbursed.

(iii) For an SLS borrower who has not yet entered repayment on a Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Stafford loan.

(3)(i) Except as provided in paragraphs (a)(4) and (5) of this section, for a Stafford loan the repayment period begins--

(A) For a borrower with a loan for which the applicable interest rate is 7 percent per year, not less than 9 nor more than 12 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guaranty agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than--

(A) 45 days following the first day that the repayment period begins;

(B) 45 days from the expiration of a deferment or forbearance period;

(C) 45 days following the end of the grace period;

(D) If the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the date the lender learns that the borrower has entered the repayment period; or

(E) An additional 30 days beyond the periods specified in paragraphs (a)(3)(ii)(A)-(a)(3)(ii)(D) of this section in order for the lender to comply with the required deadlines contained in Sec. 682.205(c)(1).

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3)(i) of this section begins on the earliest of the date--

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in Sec. 682.602. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under Sec. 682.602.

(5) For a Stafford loan, the repayment period begins prior to the end of the grace period if the borrower requests in writing and is granted a repayment schedule that so provides. In this event, a borrower waives the remainder of the grace period.

(6)(i) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase or decrease in amount during the repayment period. If the loan has a variable interest rate that changes annually, the lender may establish a repayment schedule that--

(A) Provides for adjustments of the amount of the installment payment to reflect annual changes in the variable interest rate; or

(B) Contains no provision for an adjustment of the amount of the installment payment to reflect annual changes in the variable interest rate, but requires the lender to grant a forbearance to the borrower (or endorser, if applicable) for a period of up to 3 years of payments in accordance with Sec. 682.211(j)(5) in cases where the effect of a variable interest rate on a standard or graduated repayment schedule would result in a loan not being repaid within the maximum repayment term.

(ii) If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment. An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(iii) Not more than six months prior to the date that the borrower's first payment is due, the lender shall offer a choice of a standard, graduated, or income-sensitive repayment schedule to a new borrower who receives a Stafford or SLS loan first disbursed on or after July 1, 1993. For purposes of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of July 1, 1993 or on the date he or she obtains a loan on or after July 1, 1993. This term also includes a borrower who obtains a Federal Consolidation Loan on or after July 1, 1993 if the borrower has no other outstanding FFEL Program loan when the Consolidation Loan is made. The lender shall also offer a choice of repayment schedules to any individual whose Consolidation loan application is received by the lender on or after January 1, 1993. The Secretary encourages lenders to offer the choice of repayment schedules to all other borrowers.

(iv) The repayment schedule must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(v) The lender shall require the borrower to repay the loan under a standard repayment schedule described in paragraph (a)(6)(vi) of this section if the borrower--

(A) Does not select an income-sensitive or a graduated repayment schedule within 45 days after being notified by the lender to choose a repayment schedule; or

(B) Chooses an income-sensitive repayment schedule, but does not provide the documentation requested by the lender under paragraph (a)(6)(viii)(C) of this section within the time period specified by the lender.

(vi) Under a standard repayment schedule, the borrower is scheduled to pay either--

(A) The same amount for each installment payment made during the repayment period, except that the borrower's final payment may be slightly more or less than the other payments; or

(B) An installment amount that will be adjusted to reflect annual changes in the loan's variable interest rate.

(vii) Under a graduated repayment schedule--

(A) The amount of the borrower's installment payment is scheduled to change (usually by increasing) during the course of the repayment period; and

(B) An agreement as specified in paragraph (c)(1)(ii) of this section is not required if the schedule provides for less than the minimum annual payment amount specified in paragraph (c)(1)(i) of this section.

(viii) Under an income-sensitive repayment schedule--

(A) The amount of the borrower's installment payment is adjusted annually, based on the borrower's expected total monthly gross income received by the borrower from employment and from other sources during the course of the repayment period;

(B) In general, the lender shall request the borrower to inform the lender of his or her income no earlier than 90 days prior to the due date of the borrower's initial installment payment and subsequent annual payment adjustment under an income-sensitive repayment schedule. The income information must be sufficient for the lender to make a reasonable determination of what the borrower's payment amount should be. If the lender receives late notification that the borrower has dropped below half-time enrollment status at a school, the lender may request that income information earlier than 90 days prior to the due date of the borrower's initial installment payment;

(C) If the borrower reports income to the lender that the lender considers to be insufficient for establishing monthly installment payments that would repay the loan within the maximum 10-year repayment period, the lender shall require the borrower to submit evidence showing the amount of the most recent total monthly gross income received by the borrower from employment and from other sources including, if applicable, pay statements from employers and documentation of any income received by the borrower from other parties;

(D) The lender shall grant a forbearance to the borrower (or endorser, if applicable) for a period of up to 5 years of payments in accordance with Sec. 682.211(j)(5) in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in a loan not being repaid within the maximum repayment term; and

(E) The lender shall inform the borrower that the loan must be repaid within the time limits specified under paragraph (a)(7) of this section.

(ix) For purposes of this section, a lender may require that all FFEL loans owed by a borrower to the lender be combined into one account and repaid under one repayment schedule. In that event, the word "loan" in this section shall mean all of the borrower's loans that were combined by the lender into that account.

(7)(i) Subject to paragraphs (a)(7)(ii) through (iv) of this section, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in Sec. 682.210 or Sec. 682.211 respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods, and from the 12-, 15-, 20-, 25-, and 30-year periods for repayment of a Consolidation loan pursuant to Sec. 682.208(h).

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may, by written notice to the lender at any time during the repayment period, extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Payment application and prepayment.* (1) The lender may credit the entire payment amount first to any late charges accrued or collection costs and then to any outstanding interest and then to outstanding principal.

(2)(i) The borrower may prepay the whole or any part of a loan at any time without penalty.

(ii) If the prepayment amount equals or exceeds the monthly payment amount under the repayment schedule established for the loan, the lender shall apply the prepayment to future installments by advancing the next payment due date, unless the borrower requests otherwise. The lender must either inform the borrower in advance using a prominent statement in the borrower coupon book or billing statement that any additional full payment amounts submitted without instructions to the lender as to their handling will be applied to future scheduled payments with the borrower's next scheduled payment due date advanced consistent with the number of additional payments received, or provide a notification to the borrower after the payments are received informing the borrower that the payments have been so applied and the date of the borrower's next scheduled payment due date. Information related to next scheduled payment due date need not be provided to borrower's making such prepayments while in an in-school, grace, deferment, or forbearance period when payments are not due.

(c) *Minimum annual payment.* (1)(i) Subject to paragraph (c)(1)(ii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's FFEL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance as described in Sec. 682.211, or deferment described in Sec. 682.210, has been approved.

(d) *Combined repayment of a borrower's student PLUS and SLS loans held by a lender.* (1) A lender may, at the request of a student borrower, combine the borrower's, student PLUS and SLS loans held by it into a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the beginning of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) *Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate.* (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(2) A loan made under paragraph (e)(1) of this section--

(i) Must bear interest at the variable rate described in Sec. 682.202(a)(2)(iv); and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(3) The lender may not charge an additional insurance premium on the loan, but may charge the borrower an administrative fee pursuant to Sec. 682.202(e).

(f) *Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan.* (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower's fixed-rate PLUS or SLS loan, may obtain a loan from another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(2) A loan made under paragraph (f)(1) of this section--

(i) Must bear interest at the variable interest rate described in Sec. 682.202(a)(2)(iv);

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower's obligation thereon.

(3) Upon receipt of the proceeds of a loan made under paragraph (f)(1) of this section, the holder of the fixed-rate loan shall, within five business days, apply the proceeds to discharge the borrower's obligation on the fixed-rate loan, and provide the refinancing lender with either a copy of the borrower's original promissory note evidencing the fixed-rate loan or the holder's written certification that the borrower's obligation on the fixed-rate loan has been fully discharged.

(4) The refinancing lender may charge the borrower an insurance premium on a loan made under paragraph (f)(1) of this section, but may not charge a fee to cover administrative costs.

(5) For purposes of deferments under Sec. 682.210, the refinancing loan--

(i) Is considered a PLUS loan if any of the included loans is a PLUS loan made to a parent;

(ii) Is considered an SLS loan if the combined loan does not include a PLUS loan made to a parent; or

(iii) Is considered a loan to a "new borrower" as defined in Sec. 682.210(b)(7), if all the loans that were refinanced were made on or after July 1, 1987, for a period of enrollment beginning on or after that date.

(g) *Conditions for refinancing certain loans.* (1) A lender may not refinance a loan under paragraphs (e) or (f) of this section if that loan is in default, involves a violation of a condition of reinsurance described in Sec. 682.406, or, in the case of a Federal SLS or PLUS loan, is uninsured by the Secretary.

(2)(i) Prior to refinancing a fixed-rate loan under paragraph (f) of this section, the lender shall obtain a written statement from the holder of the loan certifying that--

(A) The holder has refused to refinance the fixed-rate loan under paragraph (e) of this section; and

(B) The fixed-rate loan is eligible for insurance or reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 business days of receiving a lender's written request to provide a certification under paragraph (g)(2)(i) of this section, provide the lender with that certification, or provide the lender and the guarantor on the loan with a written explanation of the reasons for its inability to provide the certification to the requesting lender.

(iii) The refinancing lender may rely in good faith on the certification provided by the holder of the fixed-rate loan under paragraph (g)(2)(ii) of this section.

(h) *Consolidation loans.* (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within 60 days after the date of disbursement.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant--

(i) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(ii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iii) Is equal to or greater than $20,000 but less than $40,000, the borrower shall repay the Consolidation loan in not more than 20 years;

(iv) Is equal to or greater than $40,000 but less than $60,000, the borrower shall repay the Consolidation loan in not more than 25 years; or

(v) Is equal to or greater than $60,000, the borrower shall repay the Consolidation loan in not more than 30 years.

(3) In order to qualify for a repayment period under paragraph (h)(2)(ii) of this section, the Consolidation loan must include at least $5,000 in Title IV Part B loans.

(4) For the purpose of paragraph (h)(2) of this section the unpaid balance on other student loans--

(i) May not exceed the amount of the Consolidation loan; and

(ii) Does not include the unpaid balance on any loan not made under Title IV of the HEA on which the borrower is in default, but may include the unpaid balance on a defaulted loan made under Title IV of the HEA if the borrower has made satisfactory repayment arrangements with the holder to repay that loan.

(iii) May include loans received prior to the date of the Consolidation loan provided that the loans are included within 180 days after the Consolidation loan is made.

(5) A repayment schedule for a Consolidation loan--

(i) Must be established by the lender;

(ii) Must provide for graduated or income-sensitive repayment; and

(iii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(6) Upon receipt of the proceeds of a loan made under paragraph (h)(2) of this section, the holder of the underlying loan shall promptly apply the proceeds to discharge fully the borrower's obligation on the underlying loan, and provide the consolidating lender with the holder's written certification that the borrower's obligation on the underlying loan has been fully discharged.

(i) *Treatment by a lender of borrowers' refunds received from schools.* (1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the borrower's loan balance consistent with the requirements of Secs. 682.202 and 682.401.

(2)(i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under 682.209(f) or by a Consolidation loan, the lender shall transmit the amount of the refund payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (i)(2)(i) of this section, the holder of the loan promptly shall provide written notice to the borrower that the holder has received the refund.

(j) *Certification on loans to be repaid through consolidation.* Within 10 business days after receiving a written request for a certification from a lender under Sec. 682.206(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a), (b), (c), and (h) amended May 17, 1994, effective July 1, 1994. (c)(2) amended June 28, 1994, effective July 1, 1995. (a)(6)(i), (a)(7)(ii), and (h)(4)(ii) amended and (a)(6)(iii) through (ix) added June 29, 1994, effective July 1, 1995. (b) amended December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996. (i)(1) revised November 28, 1997, effective July 1, 1998.

Sec. 682.210 Deferment.

(a) *General.* (1)(i) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) of this section.

(ii) With the exception of a deferment authorized under paragraph (o) of this section, a borrower may continue to receive a specific type of deferment that is limited to a maximum period of time only if the total amount of time that the borrower has received the deferment does not exceed the maximum time period allowed for the deferment.

(2)(i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that begins after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless interest accrues and is paid by the Secretary if--

(i) in the case of a Stafford loan, the loan was determined to be eligible for interest benefits under Sec. 682.301 when the loan was made; or

(ii) in the case of a Consolidation loan for which the application was received by an eligible lender on or after January 1, 1993, during any period the borrower was eligible for a deferment under section 428(b)(1)(m).

(4) As a condition for receiving a deferment, the borrower shall request the deferment, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request and the information and documentation required for the deferment.

(6) An authorized deferment period ends on the earlier of--

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of a student deferment for a Stafford or PLUS loan made to a borrower guaranteed by a guaranty agency whose student status confirmation report system includes student status reports for each borrower with a student deferment, and in the case of an SLS loan made to a borrower for a period of enrollment that commences at the same time as the deferment, the student's anticipated graduation date as indicated on the loan application, and as updated by notice to the lender from the school or guaranty agency; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish default does not run during the deferment and post-deferment grace periods. Unless the lender has granted the borrower forbearance under Sec. 682.211, when the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements acceptable to the lender prior to the payment of a default claim by a guaranty agency.

(9) The borrower promptly must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c) through (r) of this section.

(11) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender shall grant a request for deferment if both individuals simultaneously meet the requirements of this section for receiving the same, or different deferments.

(b) *Authorized deferments.* (1) Deferment is authorized for a FFEL borrower during any period when the borrower is--

(i) Except as provided in paragraph (c)(4) of this section, engaged in full-time study at a school, or at a school that is operated by the Federal Government (e.g., the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State;

(ii) Engaged in a course of study under an eligible graduate fellowship program;

(iii) Engaged in a rehabilitation training program for disabled individuals;

(iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is disabled and requires continuous nursing or similar services for up to three years; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1983, deferment is authorized during any period when the borrower is--

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years;

(iii) A full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years; or

(v) Engaged in an internship of residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(iii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an eligible institution during the six months preceding the beginning of this deferment, deferment is authorized during a period of up to six months during which the borrower is--

(i)(A) Pregnant;

(B) Caring for his or her newborn child; or

(C) Caring for a child immediately following the placement of the child with the borrower before or immediately following adoption; and

(ii) Not attending a school or gainfully employed.

(4) For a "new borrower," as defined in paragraph (b)(7) of this section, of a Stafford, SLS, or PLUS loan, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school for a period of enrollment for which the borrower received a Stafford or SLS loan, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is--

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(ii) Up to three years of service as a full-time teacher in a public or non-profit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (q) of this section.

(iii) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(iv) A mother who has preschool-age children (i.e., children who have not enrolled in first grade) and who is earning not more than $1 per hour above the Federal mini-mum wage, for up to 12 months of employment, and who began that full-time employment within one year of entering or re-entering the work force. Full-time employment involves at least 30 hours of work a week and it expected to last at least 3 months.

(6) For a parent borrower of a PLUS loan, deferment is authorized during any period when a student on whose behalf the parent borrower received the loan--

(i) Is not independent as defined in section 480(d) of the Act; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i)-(iii) and (b)(4) of this section.

(7) For purposes of this section, a "new borrower" with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on--

(i) A Stafford, SLS, or PLUS loan made prior to July 1, 1987 for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan that repaid a loan made prior to July 1, 1987 and for a period of enrollment beginning prior to July 1, 1987.

(c) *Student deferment.* (1) Except as provided in paragraph (c)(4) of this section, to document eligibility for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with--

(i) A completed deferment application or certified loan application; and

(ii) A statement, which may be on the deferment application or a loan application, completed by an authorized official of the school certifying that the borrower is enrolled on a full-time basis, or, in the case of a deferment described in paragraph (b)(4) of this section, on at least a half-time basis; and

(iii) In the case of a deferment described in paragraph (b)(4) of this section for a borrower who is at least half-time but less than full-time, a statement from the financial aid administrator of the school or other documentation evidencing that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought.

(2) The lender shall consider a deferment granted on the basis of a certified loan application to cover the period lasting until the anticipated graduation date appearing on the application, unless and until it receives notice that the borrower has ceased the level of study (i.e., full-time or half-time) required for the deferment.

(3) In the case of a Stafford, SLS or PLUS borrower, the lender shall treat the certified loan application or other form certified by the school or for multiple holders of a borrower's loans, shared data from the Student Status Confirmation

Report, as sufficient documentation for a student deferment for any outstanding Stafford, SLS or PLUS loan previously made to the borrower.

(4) A borrower serving in a medical internship residency program, except for an internship in dentistry, is prohibited from receiving or continuing a deferment on a Stafford, SLS, or Consolidation loan under paragraph (c) of this section.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an authorized official of the borrower's fellowship program certifying--

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that--

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrower's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that--

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by--

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that--

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that normally would prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled as defined in Sec. 682.200(b).

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition has substantially deteriorated so as to render the borrower temporarily totally disabled, as substantiated by the statement required under paragraph (f)(1) of this section, after the borrower submitted the loan application.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) *Dependent's disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent requires continuous nursing or similar services for a period of at least 90 days, the borrower shall provide the lender with a statement--

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent requires continuous nursing or similar services for a period of at least 90 days; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing continuous nursing or similar services to the borrower's spouse or other dependent. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) *Unemployment deferment. (1)* To qualify for an unemployment deferment, a borrower shall provide the lender with a written certification--

(i) Describing the borrower's conscientious search for full-time employment during the preceding six months, except in the case of the initial period of unemployment, including, for each of at least six attempts to secure employment to support the period covered by the certification--

(A) The name of the employer contacted;

(B) The employer's address and phone number;

(C) The name or title of the person contacted; and

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is within a 50-mile radius of the borrower's permanent or temporary address, specifying the agency's name and address and the date of registration.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) An unemployment deferment is not justified if the borrower refuses to seek or accept employment in kinds of positions or at salary and responsibility levels for which the borrower feels over qualified by virtue of education or previous experience.

(4) For the purpose of this paragraph, full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(5) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(6) A lender may accept, as an alternative to the certification of employer contacts required under paragraph (h)(1)(ii) of this section, comparable documentation the borrower has used to meet the requirements of the Unemployment Insurance Service, provided it shows the same number of contacts and contains the same information the borrower would be required to provide under the Department's regulations.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower shall provide the lender with--

(i) A written statement from the borrower's commanding or personnel officer certifying--

(A) That the borrower is on active duty in the Armed Forces of the United States;

(B) The date on which the borrower's service began; and

(C) The date on which the borrower's service is expected to end; or

(ii)(A) A copy of the borrower's official military orders; and

(B) A copy of the borrower's military identification.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

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(j) *Public Health Service deferment.* To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying--

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(k) *Peace Corps deferment.* To qualify for a deferment for service under the Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying--

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(l) *Full-time volunteer service in the ACTION programs.* To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying--

(1) That the borrower has agreed to serve for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying--

(1) That the borrower--

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(n) *Internship or residency deferment.* (1) To qualify for an internship or residency deferment under paragraphs (b)(2)(v) or (b)(5)(iii) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying--

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program; and

(iv) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) *Parental-leave deferment.* (1) To qualify for the parental-leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with--

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower--

(A) Is pregnant, caring for his or her newborn child, or caring for a child immediately following the placement of the child with the borrower in connection with an adoption;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement demonstrating the existence of the pregnancy, a birth certificate, or a statement from the adoption agency official evidencing a pre-adoption placement.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) *NOAA deferment.* To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying--

(1) That the borrower is on active duty service in the NOAA corps;

(2) The date on which the borrower's service began; and

(3) The date on which the borrower's service is expected to end.

(q) *Targeted teacher deferment.* (1) To qualify for a targeted teacher deferment under paragraph (b)(5)(ii) of this section, the borrower, for each school year of service for which a deferment is requested, must provide to the lender--

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the borrower is teaching, certifying that the borrower is employed as a full-time teacher; and

(ii) A certification that he or she is teaching in a teacher shortage area designated by the Secretary as provided in paragraphs (q)(5) through (7) of this section, as described in paragraph (q)(2) of this section.

(2) In order to satisfy the requirement for certification that a borrower is teaching in a teacher shortage area designated by the Secretary, a borrower must do one of the following:

(i) If the borrower is teaching in a State in which the Chief State School Officer has complied with paragraph (q)(3) of this section and provides an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's chief administrative officer.

(ii) If a borrower is teaching in a State in which the Chief State School Officer has not complied with paragraph (q)(3) of this section or does not provide an annual listing of designated teacher shortage areas to the State's chief administrative officers whose schools are affected by the Secretary's designations, the borrower must obtain certification that he or she is teaching in a teacher shortage area from the Chief State School Officer for the State in which the borrower is teaching.

(3) In the case of a State in which borrowers wish to obtain certifications as provided for in paragraph (q)(2)(i) of this section, the State's Chief State School Officer must first have notified the Secretary, by means of a one-time written assurance, that he or she provides annually to the State's chief administrative officers whose schools are affected by the Secretary's designations and the guaranty agency for that State, a listing of the teacher shortage areas designated by the Secretary as provided for in paragraphs (q)(5) through (7) of this section.

(4) If a borrower who receives a deferment continues to teach in the same teacher shortage area as that in which he or she was teaching when the deferment was originally granted, the borrower shall, at the borrower's request, continue to receive the deferment for those subsequent years, up to the three-year maximum deferment period, even if his or her position does not continue to be within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent

year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school that employs the borrower, certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area for which the deferment was received for the previous year.

(5) For purposes of this section a teacher shortage area is--

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level or academic, instructional, subject-matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraphs (q)(6) or (q)(7) of this section.

(6)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (q)(6)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made, unless that data is not yet available, in which case he or she may use data from the immediately preceding school year, with respect to--

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary or secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation does not exceed 5 percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE elementary and secondary teaching positions identified under paragraph (q)(6)(ii) of this section in the shortage areas proposed by the State for designation exceeds 5 percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(7) A Chief State School Officer may submit to the Secretary for approval an alternative written procedure to the one described in paragraph (q)(6) of this section, for the Chief State School Officer to use to select the teacher shortage areas recommended to the Secretary for designation, and for the Secretary to use to choose the areas to be designated. If the Secretary approves the proposed alternative procedure, in writing, that procedure, once approved, may be used instead of the procedure described in paragraph (q)(6) of this section for designation of teacher shortage areas in that State.

(8) For purposes of paragraphs (q)(1) through (7) of this section--

(i) The definition of the term school in Sec. 682.200(b) does not apply;

(ii) Elementary school means a day or residential school that provides elementary education, as determined under State law;

(iii) Secondary school means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade;

(iv) Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) Chief State School Officer means the highest ranking educational official for elementary and secondary education for the State;

(vi) School year means the period from July 1 of a calendar year through June 30 of the following calendar year;

(vii) Teacher shortage area means an area of specific grade, subject matter, or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers; and

(viii) Full-time equivalent means the standard used by a State in defining full-time employment, but not less than 30 hours per week. For purposes of counting full-time equivalent teacher positions, a teacher working part of his or her total hours in a position that is designated as a teacher shortage area is counted on a pro rata basis corresponding to the percentage of his or her working hours spent in such a position.

(r) *Working-mother deferment.* (1) To qualify for the working-mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she--

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the beginning date of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of her child (e.g., a birth certificate) and the rate of her compensation (e.g., a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph--

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(s) *Deferments for new borrowers on or after July 1, 1993*--(1) *General.* A new borrower who receives an FFEL Program loan first disbursed on or after July 1, 1993 is entitled to receive deferments under paragraphs (s)(2) through (s)(6) of this section. For purposes of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of July 1, 1993 or on the date he or she obtains a loan on or after July 1, 1993. This term also includes a borrower who obtains a Federal Consolidation Loan on or after July 1, 1993 if the borrower has no other outstanding FFEL Program loan when the Consolidation Loan was made.

(2) *Student deferment.* An eligible borrower is entitled to a deferment for at least half-time study in accordance with the rules prescribed in Sec. 682.210(c), except that the borrower is not required to obtain a Stafford or SLS loan for the period of enrollment covered by the deferment.

(3) *Graduate fellowship deferment.* An eligible borrower is entitled to a graduate fellowship deferment in accordance with the rules prescribed in Sec. 682.210(d).

(4) *Rehabilitation training program deferment.* An eligible borrower is entitled to a rehabilitation training program deferment in accordance with the rules prescribed in Sec. 682.210(e).

(5) *Unemployment deferment.* An eligible borrower is entitled to an unemployment deferment in accordance with the rules prescribed in Sec. 682.210(h) for periods that, collectively, do not exceed 3 years.

(6) *Economic hardship deferment.* An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years, if the borrower provides documentation satisfactory to the lender showing that the borrower--

(i) Has been granted an economic hardship deferment under either the Direct Loan or Federal Perkins Loan Programs for the period of time for which the borrower has requested an economic hardship deferment for his or her FFEL loan;

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance;

(iii) Is working full-time and earning a total monthly gross income that does not exceed the greater of--

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act;

(iv) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's total monthly gross income, and the borrower's income minus such burden is less than 220 percent of the amount calculated under paragraph (s)(6)(iii) of this section; or

(v) Is not working full-time and has a total monthly gross income that does not exceed twice the amount calculated under paragraph (s)(6)(iii) of this section and, after deducting an amount equal to the borrower's Federal education debt burden, as determined under paragraph (s)(6)(vi) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (s)(6)(iii) of this section.

(vi) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s)(6)(iv) through (v) of this section, the lender shall count only the monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been owed on a Federal postsecondary education loan if the loan had been scheduled to be repaid in 10 years from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the actual monthly payment amount (if any) that would be owed during the period that the borrower requested an economic hardship deferment. The lender shall require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for Federal postsecondary education loans in accordance with paragraph (s)(6)(vi) of this section.

(vii) For an initial period of deferment granted under paragraphs (s)(6)(iii) through (v) of this section, the lender shall require the borrower to submit evidence showing the amount of the borrower's most recent total monthly gross income, as defined in paragraph (s)(6)(ix) of this section.

(viii) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender shall require the borrower to submit evidence showing the amount of the borrower's most recent total monthly gross income, as defined in paragraph (s)(6)(ix) of this section, and a copy of the borrower's Federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(ix) For purposes of paragraph (s)(6) of this section, a borrower's total monthly gross income shall be the gross amount of income received by the borrower from employment (either full-time or part-time) and from other sources.

(x) For purposes of paragraph (s)(6) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a)(3), (a)(8), (b)(6), and (c)(3) amended May 17, 1994, effective July 1, 1994. (a)(1) and (c)(4) amended and (a)(11) and (s) added June 29, 1994, effective July 1, 1995. (s)(6) amended November 29, 1994, effective July 1, 1995. (a)(8) amended December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996.

Sec. 682.211 Forbearance.

(a)(1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower or endorser in order to prevent the borrower or endorser from defaulting on the borrower's or endorser's repayment obligation, or to permit the borrower or endorser to resume honoring that obligation after default. Forbearance means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Subject to paragraph (h) of this section, a lender may grant forbearance of payments of principal and interest under paragraphs (b), (c), and (d) of this section only if--

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under Sec. 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under Sec. 682.301.

(3) If two individuals are jointly liable for repayment of a PLUS loan or a Consolidation loan, the lender may grant forbearance on repayment of the loan only if the ability of both individuals to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in Sec. 682.202(b).

(b) A lender may grant forbearance if the lender and the borrower or endorser agree in writing to the terms of the forbearance, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree in writing to the forbearance.

(d) A guaranty agency may authorize a lender to grant forbearance to permit a borrower or endorser to resume honoring the agreement to repay the debt after default. The terms of the forbearance agreement in this situation must include a new signed repayment obligation.

(e) Except in the case of forbearance of interest payments during a deferment period or a forbearance granted under paragraph (g) of this section, if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser by telephone or send a written notice to the borrower or endorser at least once every three months during the period of forbearance to remind the borrower or endorser of the outstanding obligation to repay.

(f) A lender may grant administrative forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or that would be overdue--

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

(2) Upon the beginning of an authorized deferment period;

(3) For the period beginning when the borrower entered repayment until the first payment due date was established;

(4) For a period as authorized by the Secretary in the event of a national military mobilization or other national emergency; or

(5) For the period prior to the borrower's filing of a bankruptcy petition as provided in Sec. 682.402(d).

(6) For a period not to exceed 60 days after the lender receives reliable information indicating that the borrower (or student in the case of a PLUS loan) has died, or the borrower has become totally and permanently disabled, until the lender receives documentation of death or total and permanent disability, pursuant to Sec. 682.402(b) or (c);

(7) For periods necessary for the Secretary or guaranty agency to determine the borrower's eligibility for discharge of the loan because of attendance at a closed school or false certification of loan eligibility, pursuant to Sec. 682.402(d) or (e), or the borrower's or, if applicable, endorser's bankruptcy, pursuant to Sec. 682.402(f); or

(8) For a period of delinquency at the time a loan is sold or transferred, if the borrower or endorser is less than 60 days delinquent on the loan at the time of sale or transfer.

(9) For a period of delinquency that may remain after a borrower ends a period of deferment or mandatory forbearance until the next due date is established in accordance with Sec. 682.209(a)(3)(ii)(B).

(g) Upon the written request of the borrower, a lender shall grant forbearance of principal and, unless otherwise indicated by the borrower, interest, in intervals not to exceed 12 months, to a borrower whose deferment received under Sec. 682.210(n) has expired until the borrower has completed the internship or residency.

(h) In granting a forbearance under this section, except for a forbearance under paragraph (j)(5), a lender shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (a)(1) of this section.

(i) *Mandatory forbearance.* (1) Medical or dental interns or residents. Upon receipt of a written request and sufficient supporting documentation, as described in Sec. 682.210(n), from a borrower serving in a medical or dental internship or residency program, a lender shall grant forbearance to the borrower in yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) if the borrower has exhausted his or her eligibility for a deferment under Sec. 682.210(n), or the borrower's promissory note does not provide for such a deferment--

(i) For the length of time remaining in the borrower's medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service; or

(ii) For the length of time that the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(2) *Borrowers who are not medical or dental interns or residents, and endorsers.* Upon receipt of a written request and sufficient supporting documentation from an endorser (if applicable), or from a borrower (other than a borrower who is serving in a medical or dental internship or residency described in paragraph (i)(1) of this section), a lender shall grant forbearance--

(i) In increments up to one year, for periods that collectively do not exceed three years, if--

(A) The borrower or endorser is currently obligated to make payments on Title IV loans; and

(B) The amount of those payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's or endorser's total monthly income;

(ii) In yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) for as long as a borrower--

(A) Is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993;

(B) Is eligible for loan forgiveness under the Federal Stafford Loan Forgiveness Demonstration Program, if the program is funded, for performing the type of service described in Sec. 682.215(b); or

(C) Is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171..

(3) *Documentation.* (i) Before granting a forbearance to a borrower or endorser under paragraph (i)(2)(i) of this section, the lender shall require the borrower or endorser to submit at least the following documentation:

(A) Evidence showing the amount of the most recent total monthly gross income received by the borrower or endorser from employment and from other sources; and

(B) Evidence showing the amount of the monthly payments owed by the borrower or endorser to other entities for the most recent month for the borrower's or endorser's Title IV loans.

(ii) Before granting a forbearance to a borrower or endorser under paragraph (i)(2)(ii)(B) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates that the borrower is expected to perform the type of service described in Sec. 682.215(b).

(iii) Before granting a forbearance to a borrower or endorser under paragraph (i)(2)(ii)(C) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates that the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under the Student Loan Repayment Programs.

(j) *Mandatory administrative forbearance.* (1) The lender shall grant a mandatory administrative forbearance for the periods specified in paragraph (j)(2) of this section until the lender is notified by the Secretary or a guaranty agency that the forbearance period no longer applies. The lender may not require a borrower who is eligible for a forbearance under paragraph (j)(2)(ii) of this section to submit a request or supporting documentation, but shall require a borrower (or endorser, if applicable) who requests forbearance because of a military mobilization to provide documentation showing that he or she is subject to a military mobilization as described in paragraph (j)(4) of this section.

(2) The lender is not required to notify the borrower (or endorser, if applicable) at the time the forbearance is granted, but shall grant a forbearance to a borrower or endorser during a period, and the 30 days following the period, when the lender is notified by the Secretary that--

(i) Exceptional circumstances exist, such as a local or national emergency or military mobilization; or

(ii) The geographical area in which the borrower or endorser resides has been designated a disaster area by the president of the United States or Mexico, the prime minister of Canada, or by a governor of a state.

(3) As soon as feasible, or by the date specified by the Secretary, the lender shall notify the borrower (or endorser, if applicable) that the lender has granted a forbearance and the date that payments should resume. The lender's notification shall state that the borrower or endorser--

(i) May decline the forbearance and continue to be obligated to make scheduled payments; or

(ii) Consents to making payments in accordance with the lender's notification if the forbearance is not declined.

(4) For purposes of paragraph (j)(2)(i) of this section, the term "military mobilization" shall mean a situation in which the Department of Defense orders members of the National Guard or Reserves to active duty under sections 672(a), 672(g), 673, 673b, 674, or 688 of title 10, United States Code. This term also includes the assignment of other members of the Armed Forces to duty stations at locations other than the locations at which they were normally assigned, only if the military mobilization involved the activation of the National Guard or Reserves.

(5) The lender shall grant a mandatory administrative forbearance to a borrower (or endorser, if applicable) during a period when the borrower (or endorser, if applicable) is making payments for a period of--

(i) Up to 3 years of payments in cases where the effect of a variable interest rate on a standard or graduated repayment schedule would result in a loan not being repaid within the maximum repayment term; or

(ii) Up to 5 years of payments in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in the loan not being repaid within the maximum repayment term.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1080, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (d) and (g) amended May 17, 1994, effective July 1, 1994. (a)(3) and (h) amended and (f) (6) through (8), (i), and (j) added June 29, 1994, effective July 1, 1995. (f)(9) added December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996.

Sec. 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to--

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made--

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under Sec. 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that--

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1097)

Sec. 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principle balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082)

Sec. 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan on which interest benefits are to be paid, a lender shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202). With regard to Regulation B, the Secretary considers the Stafford loan program to be a credit-assistance program

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authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and spouse's financial resources.

(Authority: 20 U.S.C. 1071-1087-2)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993.

Sec. 682.215 Federal Stafford Loan forgiveness demonstration program.

(a) *General.* The Federal Stafford Loan forgiveness demonstration program is intended to encourage individuals to enter the teaching and nursing professions and to perform national and community service. Under this demonstration program, the Secretary repays portions of unsubsidized, subsidized and nonsubsidized Federal Stafford obligations that were incurred by a borrower during the borrower's last two years of undergraduate education if that borrower worked in those professions or performed that service. For purposes of this section, an eligible borrower is a borrower who, as of October 1, 1989, had no outstanding debt under the FFEL programs.

(b) *Borrower eligibility; requirements for qualification.* A borrower may obtain loan forgiveness under this program if he or she was employed as a full-time teacher in certain elementary and secondary schools teaching certain subjects or as a full-time nurse in certain types of hospitals or health care centers, or was serving as a volunteer under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973, or was performing comparable service as a full-time employee of a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986. For purposes of this section, full-time means the standard used by a State or profession in defining full-time employment. For a borrower serving in more than one organization, the determination of "full-time" is based on the combination of all qualifying employment. A borrower who is in default on a FFEL loan and has not made satisfactory repayment arrangements is not eligible for forgiveness. However, if a borrower has made satisfactory repayment arrangements on the loan or loans in default, the forgiveness applies only to the loan or loans held by the holder that are not in default. Federal Stafford loans that have been rehabilitated are eligible for forgiveness.

(c) *Application.* To qualify for the forgiveness program, an eligible borrower shall apply to the Secretary each year following a completed year of service, but no earlier than September 1 and no later than October 1 of a given year. The application must be in writing, on a form provided by the Secretary and according to procedures established by the Secretary. An eligible borrower must complete a year of service prior to filing a loan forgiveness application with the Secretary. Eligible borrowers are chosen on a first-come, first-served basis to participate and must receive forbearance upon request for each year of service for which forgiveness is requested. An eligible borrower must reapply each year to receive the forgiveness benefit. Incomplete or inaccurate applications are not considered in the first-come, first-served process. If a borrower initially submits an incomplete or inaccurate application, the borrower must provide a completed application to the Secretary or his designee prior to consideration in the selection process.

(d) *Limitation; Stafford forgiveness recipients.* The total amount of loans forgiven is limited to the amount of funds appropriated for the fiscal year for the demonstration program.

(e) *Borrower eligibility; teaching forgiveness.* (1) To qualify for teaching loan forgiveness under this section, a borrower must have taught full-time for a year (as defined by the jurisdiction in which the borrower is employed) in a teacher shortage area as certified by the authorizing official. For purposes of this paragraph a teacher has taught in a teacher shortage area if--

(i) The teacher taught in a school that satisfied the criteria in section 465(a)(2)(A) of the Act for loan cancellation for Perkins loan recipients who teach in those schools; and

(ii) The teacher taught mathematics, science, foreign languages, special education, bilingual education or in any other field of expertise where the State educational agency determined there was a shortage of qualified teachers.

(2) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee--

(i) A statement by the chief administrative officer of the public elementary or secondary school in which the borrower was teaching--

(A) Certifying the year that the borrower was employed as a full-time teacher;

(B) Certifying which subject area listed in paragraph (e)(1)(ii) of this section or designated by the State educational agency the borrower taught; and

(C) Verifying that the borrower taught in a school that satisfies the requirements of paragraph (e)(1)(i) of this section.

(f) *Borrower eligibility; volunteer service forgiveness.* (1)(i) To qualify for the volunteer service loan forgiveness under this paragraph, a borrower must have served as a full-time volunteer for at least a year (defined as twelve consecutive months) under--

(A) The Peace Corps Act; or

(B) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(ii) A borrower may also qualify for the volunteer service loan forgiveness if the borrower performed service comparable to service provided under paragraph (f)(1) of this section as a full-time employee of an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, if the borrower did not receive compensation that exceeds the greater of--

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two as defined in section 673(2) of the Community Services Block Grant Act.

(2) To qualify under this paragraph, the borrower must--

(i) Have worked for an organization that provides services to low income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions; and

(ii) Not, as part of his or her duties, have given religious instruction, conducted worship services, engaged in religious proselytizing, or engaged in fund-raising to support religious activities.

(3) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested under paragraphs (f)(1), (f)(2), or (f)(3) of this section must provide to the Secretary or his designee a statement from an authorized official of the organization or agency for whom the borrower worked certifying--

(i) That the borrower served in a job that satisfies the requirements of this paragraph;

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower completed the year of service.

(g) *Borrower eligibility; nursing profession loan forgiveness.* (1) To qualify for the nursing profession loan forgiveness under this paragraph, a borrower must have been employed as a full-time nurse for a public hospital, a rural health clinic, a migrant health center, an Indian Health Service Health Center, an Indian Health Center, a Native Hawaiian Health Center or for an acute care or long-term care facility.

(2) To qualify for loan forgiveness under this paragraph, a borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee--

(i) A statement from an authorized official where the borrower was employed certifying that the borrower was employed as a full-time nurse for a facility described in this section and served for the term of at least one year (defined as twelve consecutive months);

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower's year of service ended.

(h) *Forgiveness amounts.* (1) The Secretary repays the holder a percentage of the total amount of Stafford loans owed by the eligible borrower for--

(i) The borrower's last 2 years of undergraduate education; or

(ii) The 2 academic years in which a borrower who was not already participating in loan repayment pursuant to this section returned to an institution of higher education for the purpose of obtaining a post graduate teaching certificate or additional teacher certification.

(2) The Secretary repays loans on the following basis:

(i) 15 percent of the total original principal amount of Federal Stafford loans for each of the first two years in which the borrower is awarded the benefit and meets the requirements of this section.

(ii) 20 percent of the total original principal amount for each of the third and fourth years.

(iii) 30 percent of the total original principal amount for the fifth year.

(3) The Secretary repays the holder for the amount of interest, including capitalized interest, which accrued on the loan or loans subject to forgiveness over the year.

(4) Payments made by the Secretary must be applied first to the unsubsidized Federal Stafford portion of the loan, followed by the subsidized Federal Stafford portion, and then the nonsubsidized Federal Stafford portion.

(5) The amount of payments made by the Secretary under paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section may not exceed the sum of the outstanding principal balance of the loan or loans subject to forgiveness plus all interest payments made in accordance with paragraph (h)(3) of this section.

(6) Payments received from a borrower who qualifies for loan forgiveness under this section may not be refunded.

(i) *Definitions.* The following definitions apply to this section:

Acute care facility means either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than 30 days.

Elementary school means a public or nonprofit private day or residential school that provides elementary education, as determined under State law.

Indian Health Service Health Center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), that is physically separated from a hospital and that provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent.

Long-term care facility means a facility that offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments. This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service is to promote the optimum level of physical, social and psychological functioning.

Native Hawaiian Health Center means an entity (as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Pub.L. 100-579)--

(1) That is organized under the laws of the State of Hawaii;

(2) That provides or arranges for health care services through practitioners licensed by the State of Hawaii, if licensure requirements are applicable;

(3) That is a public or private nonprofit entity; and

(4) In which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Public hospital means a facility (as defined in 24 CFR 242.1)--

(1) Owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) That provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(3) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(4) That is licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

Rural Health Clinic means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in 42 CFR 491.2 that--

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as those services and supplies covered under sections 1861(s)(2)(A) and 1961(s)(10) of the Social Security Act;

(2) In the case of a facility that is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians under which provision is made for the periodic review by those physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such patients as may be necessary, and the availability of those physicians for advice and assistance in the management of medical emergencies, and in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Social Security Act, for the referral and admission of patients requiring inpatient services or diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, that are developed with the advice of (and with provision of review of those policies from time to time by) a group of professional personnel, including

one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician assistant or nurse practitioner responsible for the execution of policies described in paragraph (5) of this definition and relating to the provision of the clinic's services;

(7) Directly provides routine diagnostic services, including clinical laboratory services, as prescribed in 42 CFR 491.2, and has prompt access to additional diagnostic services from facilities meeting requirements under title 42;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined under 42 CFR 491.2 to be necessary for the treatment of emergency cases and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(10) Meets other requirements as the Secretary of Health and Human Services may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

Secondary school means a public or nonprofit private day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade.

State education agency means the agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching.

(Authority: 20 U.S.C. 1071 to 1087-2)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section added June 16, 1994, effective July 1, 1995. OMB control number added June 12, 1995, effective July 1, 1995.

Subpart C--Federal Payments of Interest and Special Allowance

Sec. 682.300 Payment of interest benefits on Stafford and Consolidation loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a subsidized Stafford loan and, on a Consolidation loan that only consolidated subsidized Stafford loans, on behalf of a borrower who qualifies under Sec. 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays a lender the interest that accrues on an eligible Stafford loan--

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraphs (b)(2) and (c) of this section.

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earliest of--

(i) The date the borrower's loan is repaid;

(ii) The date the disbursement check is returned uncashed to the lender, or the 120th day after the date of that disbursement, if--

(A) The check for the disbursement has not been cashed on or before that date; or

(B) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii)(B) and (C) have not been released from the restricted account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.412 sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guaranty agency.

(c) *Interest not covered.* The Secretary does not pay--

(1) Interest for which the borrower is not otherwise liable;

(2) Interest paid on behalf of the borrower by a guaranty agency;

(3) Interest that accrues on the first disbursement of a loan for any period that is earlier than--

(i) In the case of a subsidized Stafford loan disbursed by a check, 10 days prior to the first day of the period of enrollment for which the loan is intended or, if the loan is disbursed after the first day of the period of enrollment, 3 days after the disbursement date on the check; or

(ii) In the case of a loan disbursed by electronic funds transfer or master check, 3 days prior to the first day of the period of enrollment or, if the loan is disbursed after the first day of the period of enrollment, 3 days after disbursement.

(4) In the case of a loan disbursed on or after October 1, 1992, interest on a loan if--

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a loan provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to 3 percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

Note: (a) and (b)(2) amended May 17, 1994, effective July 1, 1994. (a), (b)(1)(i), and (c) amended June 28, 1994, effective July 1, 1995. (b)(2)(ii)(B), (c)(3)(ii), and (c)(4)(i) and (ii) amended November 30, 1994, effective July 1, 1995.

Sec. 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.

(a) *General.* (1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization--

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) (A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender on or after January 1, 1993 but prior to August 10, 1993.

(4) A Consolidation loan borrower qualifies for interest benefits only if the loan consolidates subsidized Stafford loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a loan application to the lender. The application must include a certification from the student's school of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The student's expected family contribution, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(4) The amount of the student's need for a loan, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of an SLS, PLUS, nonsubsidized Stafford loan, State sponsored loan, or private loan program obtained for a period of enrollment to replace the expected family contribution determined under paragraph (b)(3) of this section for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993. (a)(1) and (b) introductory text amended and (a)(3) and (a)(4) added June 28, 1994, effective July 1, 1995.

Sec. 682.302 Payment of special allowance on FFEL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest, computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* (1) Except for nonsubsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraph (b)(2) or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 or under Sec. 682.209 (e) or (f), no special allowance is paid for any period for which the interest rate determined under Sec. 682.202(a)(2)(iv)(A) for that loan does not exceed--

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992; or

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992.

(3) In the case of a subsidized Stafford loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a disbursement if--

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

(c) *Rate.* (1) Except as provided in paragraph (c)(2) of this section, the special allowance rate for an eligible loan during a 3-month period is calculated by--

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding--

(A) 3.1 percent to the resulting percentage for a loan made on or after October 1, 1992;

(B) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986, but before October 1, 1992;

(C) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(D) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section; or

(E) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(D) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the--

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraphs (c)(3)(ii) and (iii) of this section, the special allowance rate is one-half of the rate calculated under paragraph (c)(1)(iii)(D) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from--

(A) The issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than--

(A) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 percent.

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9 1/2 percent minus the applicable interest rate.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of--

(i) The date a borrower's loan is repaid;

(ii) The date a borrower's loan check is returned uncashed to the lender;

(iii) The date a lender receives payment on a claim for loss on the loan;

(iv) The date a loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 60th day;

(vi) The 120th day after the date of disbursement, if--

(A) The loan check has not been cashed on or before that date; or

(B) the loan proceeds disbursed by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii)(B) and (C) have not been released from the restricted account maintained by the school on or before that date; or

(vii) The 30th day after the date the guaranty agency returns a claim submitted by the deadline specified in (d)(1)(v) of this section for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day.

(2) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

(e) *Special allowance payments for loans financed by proceeds of tax-exempt obligations.* (1) The Secretary pays a special allowance on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of Sec. 682.800.

(2) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section on a loan described in paragraph (c)(3)(i) of this section--

(i) After the loan is pledged or otherwise transferred in consideration of funds derived from sources other than those described in paragraph (c)(3)(i) of this section; and

(ii) If the authority retains a legal or equitable interest in the loan--

(A) The prior tax-exempt obligation is retired; or

(B) The prior tax-exempt obligation is defeased by means of obligations that the Authority certifies in writing to the Secretary bear a yield that does not exceed the yield permitted under Internal Revenue Service regulations, 26 CFR 1.103-14, with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Note: (d)(1) amended May 17, 1994, effective July 1, 1994. (b), (c)(1)(iii), (c)(2) introductory text, (c)(3)(i) introductory text, and (c)(3)(ii) introductory text amended and (c)(3)(iii) added June 28, 1994, effective July 1, 1995. (b)(3)(i), (b)(3)(ii), and (d)(1)(vi)(B) amended November 30, 1994, effective July 1, 1995.

Sec. 682.303 [Reserved]

Sec. 682.304 Methods for computing interest benefit and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) Average daily balance method for special allowance. (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.305 Procedures for payment of interest benefits and special allowance.

(a) *General.* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect and the amount of those fees refunded to borrowers during the quarter covered by the report.

(3) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under Sec. 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under Sec. 682.202(c).

(4) If an originating lender sells or otherwise transfers a loan to a new holder, the originating lender remains liable to the Secretary for payment of the origination fees. The Secretary will not pay interest benefits or special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or the special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary--

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due by the lender to another Federal agency for credit against a debt that the Federal agency has determined the lender owes.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed by--

(i) Multiplying the daily interest rate applicable to loans on which payment for interest benefits was requested, by the amount of interest benefits due on those loans for each interest rate;

(ii) Multiplying the daily special allowance rate applicable to loans on which special allowance was requested by the amount of special allowance due on those loans for each interest rate and special allowance category;

(iii) Adding the results of paragraphs (b)(2)(i) and (ii) of this section to determine the gross penalty interest to be paid for each day that penalty interest is due;

(iv) Dividing the results of paragraph (b)(2)(iii) of this section by the gross amount of interest benefits and special allowance due to obtain the average penalty interest rate;

(v) Multiplying the rate obtained in paragraph (b)(2)(iv) of this section by the total amount of reduction to gross interest benefits and special allowance due (e.g., origination fees or other debts owed to the Federal government);

(vi) Subtracting the amount calculated in paragraph (b)(2)(v) of this section from the amount calculated under paragraph (b)(2)(iii) of this section to obtain the net amount of penalty interest due per day; and

(vii) Multiplying the amount calculated in paragraph (b)(2)(vi) of this section by the number of days calculated under paragraph (b)(3) of this section.

(3) The Secretary pays penalty interest for the period--

(i) Beginning on the later of--

(A) The 31st day after the final day of the quarter covered by the request for payment; or

(B) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender; and

(ii) Ending on the day the Secretary pays the interest benefits and the special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(4) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(5) A request for interest benefits and special allowance is not considered accurate and complete if it--

(i) Requests payments to which the lender is not entitled under Sec. 682.300 through Sec. 682.302;

(ii) Includes loans that the Secretary, in writing, has directed that the lender exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) *Independent audits.* (1) A lender shall arrange for an independent annual compliance audit conducted by a qualified independent organization or person.

(2) The audit required under paragraph (c)(1) of this section must--

(i) Examine the lender's compliance with the Act and applicable regulations;

(ii) Examine the lender's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by and available from the Office of the Inspector General of the Department;

(iv) Be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be of the lender's first fiscal year that begins after July 23, 1992, and must be submitted within six months of the end of the audit period. Each subsequent audit must cover the lender's activities for the period beginning no later than the end of the period covered by the preceding audit;

(v) With regard to a lender that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G; and

(vi) With regard to a lender that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with OMB Circular A-133, Audit of Institutions of Higher Education and Other Nonprofit Institutions, as incorporated in 34 CFR 74.61(h)(3). If a nonprofit lender meets the criteria in Circular A-133 for choosing the option for a program-specific audit, and so chooses, the program-specific audit must meet the requirements in paragraphs (c)(1) through (c)(2)(iv) of this section.

(vii) The Secretary may determine that a lender has met the requirements of paragraph (c) of this section if the lender has been audited in accordance with 31 U.S.C. 7502 for other purposes, the lender submits the results of the audit to the Office of Inspector General, and the Secretary determines that the audit meets the requirements of this paragraph.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a)(4) amended November 30, 1994, effective July 1, 1995. OMB control number republished June 15, 1995, effective July 1, 1995.

Subpart D--Administration of the Federal Family Education Loan Programs by a Guaranty Agency

Sec. 682.400 Agreements between a guaranty agency and the Secretary.

(a) The Secretary enters into agreements with a guaranty agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guaranty agency to participate in the GSL programs and to receive the various payments and benefits related to that participation.

(b) There are four agreements:

(1) *Basic program agreement.* In order to participate in the FFEL programs, a guaranty agency must have a basic program agreement. Under this agreement--

(i) Borrowers whose Stafford and Consolidation loans that consolidate only subsidized Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guaranty agency program may receive special allowance payments from the Secretary and have death, disability, and bankruptcy claims paid by the Secretary through the guaranty agency; and

(iii) The guaranty agency may apply for the administrative cost allowance and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guaranty agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guaranty agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(4) *Loan Rehabilitation Agreement.* A guaranty agency must have an agreement for rehabilitating a loan for which the Secretary has made a reinsurance payment under section 428(c)(1) of the Act.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the FFEL programs.

(Authority: 20 U.S.C. 1072, 1078-1, 1078-2, 1078-3, 1082, 1087, 1087-1)

Note: (b) introductory text, (b)(1)(i) amended and (b)(4) added June 28, 1994, effective July 1, 1995.

Sec. 682.401 Basic program agreement.

(a) *General.* In order to participate in the FFEL programs, a guaranty agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford, SLS, PLUS loans made to a borrower may not exceed the amounts set forth in Sec. 682.204 (b), (e), and (h).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in Sec. 682.204 (a), (c), (d), (f), and (g).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either--

(A) A period of not less than that attributable to the academic year; or

(B) A period attributable to the academic year in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the amount set forth in Sec. 682.204(i).

(3) *Duration of borrower eligibility.* (i) A student borrower under the Stafford Loan Program or the SLS Program and a parent borrower under the PLUS Program are eligible to receive a guaranteed loan for any year of the student's study at a participating school.

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) *Reinstatement of borrower eligibility.* For a borrower's loans held by a guaranty agency on which a reinsurance claim has been paid by the Secretary, the guaranty agency must afford a defaulted borrower, upon the borrower's request, renewed eligibility for Title IV assistance once the borrower has made satisfactory repayment arrangements as that term is defined in Sec. 682.200.

(i) For purposes of this section, the determination of reasonable and affordable must--

(A) Include consideration of the borrower's and spouse's disposable income and necessary expenses including, but not limited to, housing, utilities, food, medical costs, dependent care costs, work-related expenses and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination, if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater.

(C) Be based on the documentation provided by the borrower or other sources including, but not limited to--

(1) Evidence of current income (e.g. proof of welfare benefits, Social Security benefits, Supplemental Security Income, Workers' Compensation, child support, veterans' benefits, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g. a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances upon providing the documentation specified in paragraph (b)(4)(i)(C) of this section.

(iii) A guaranty agency must provide the borrower with a written statement of the reasonable and affordable payment amount required for the reinstatement of the borrower's eligibility for Title IV student assistance, and provide the borrower with an opportunity to object to those terms.

(iv) A guaranty agency must provide the borrower with written information regarding the possibility of loan rehabilitation if the borrower makes six additional reasonable and affordable monthly payments after making payments to regain eligibility for Title IV assistance and the consequences of loan rehabilitation.

(5) *Borrower responsibilities.* (i) The borrower shall indicate his or her preferred lender on the loan application, if he or she has such a preference.

(ii) The borrower shall give the lender, as part of the application process for a Stafford, SLS, or PLUS loan--

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) Information demonstrating that the borrower is eligible for the loan;

(C) Information concerning the outstanding FFEL loans of the borrower and, for a parent borrower, of the student, including any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan;

(D) A statement of the sources and amount of the student's estimated financial assistance, as defined in Sec. 682.200, for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan--

(A) Information demonstrating that the borrower is eligible for the loan under Sec. 682.201(c); and

(B) A statement that the borrower does not currently have another application for a Consolidation loan pending.

(iv) The borrower shall promptly notify--

(A) The current holder or the guaranty agency of any change of name, address, student status to less than half-time, employer, or employer's address; and

(B) The school of any change in local address during enrollment.

(6) *School eligibility.* (i) *General.* A school that has a program participation agreement in effect with the Secretary under Sec. 682.600 is eligible to participate in the program of the agency under reasonable criteria established by the guaranty agency, and approved by the Secretary, under paragraph (d)(2) of this section, except to the extent that--

(A) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668 or by the guaranty agency under standards and procedures that are substantially the same as those in 34 CFR Part 668;

(B) The Secretary upholds the limitation, suspension, or termination of a school by a guaranty agency and extends that sanction to all guaranty agency programs under section 432(h)(3) of the Act or Sec. 682.713;

(C) The school is ineligible under sections 428A(a)(2) or 435(a)(2) of the Act;

(D) There is a State constitutional prohibition affecting the school's eligibility;

(E) The school's programs consist of study solely by correspondence;

(F) The agency determines, subject to the agreement of the Secretary, that the school does not satisfy the standards of administrative capability and financial responsibility as defined in 34 CFR Part 668;

(G) The school fails to make timely refunds to students as required in Sec. 682.607(c);

(H) The school has not satisfied, within 30 days of issuance, a final judgment obtained by a student seeking a refund;

(I) The school or an owner, director, or officer of the school is found guilty or liable in any criminal, civil, or administrative proceeding regarding the obtaining, maintenance, or disbursement of State or Federal student grant, loan, or work assistance funds; or

(J) The school or an owner, director, or officer of the school has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of State or Federal student financial assistance funds.

(ii) *Limitation by a guaranty agency of a school's participation.* For purposes of this paragraph, a school that is subject to limitation of participation in the guaranty agency's program may be either a school that is applying to participate in the agency's program for the first time, or a school that is renewing its application to continue participation in the agency's program. A guaranty agency may limit the total number of loans or the volume of loans made to students attending a particular school, or otherwise establish appropriate limitations on the school's participation, if the agency makes a determination that the school does not satisfy--

(A) The standards of financial responsibility defined in 34 CFR 668.5; or

(B) The standards of administrative capability defined in 34 CFR 668.16.

(iii) *Limitation, suspension, or termination of school eligibility.* A guaranty agency may limit, suspend, or terminate the participation of an eligible school. If a guaranty agency limits, suspends, or terminates the participation of a school from the agency's program, the Secretary applies that limitation, suspension, or termination to all locations of the school.

(iv) *Condition for guaranteeing loans for students attending a school.* The guaranty agency may require the school to execute a participation agreement with the agency and to submit documentation that establishes the school's eligibility to participate in the agency's program.

(7) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guaranty agency except to the extent that--

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part or by the agency under standards and procedures that are substantially the same as those in subpart G of this part; or

(B) The lender is disqualified by the Secretary under sections 432(h)(1), 432(h)(2), 435(d)(3), or 435(d)(5) of the Act or Sec. 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guaranty agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(iv) The guaranty agency may, in determining whether to enter into a guarantee agreement with a lender, consider whether the lender has had prior experience in a similar Federal, State, or private nonprofit student loan program and the amount and percentage of loans that are currently delinquent or in default under that program.

(8) *Out-of-State schools.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under Sec. 682.404(h)(2) but who attend schools out of that State and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(9) *Out-of-State residents.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under Sec. 682.404(h)(2) but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and who are borrowing for students attending in-State schools.

(10) *Insurance premiums.* (i) Except for a SLS or PLUS loan refinanced under Sec. 682.209(e) or (f), the guaranty agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) The guaranty agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guaranty agency in the administration of its loan guarantee program.

(iii) The lender may deduct the amount of the premium from the borrower's loan proceeds. For a loan disbursed in more than one installment, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed 3 percent of the principal balance of the loan.

(v) The guaranty agency shall refund to the lender any insurance premium received for a loan under the circum-stances specified in Sec. 682.401(b)(9)(vi)(A) and (B).

(vi) The lender shall refund to the borrower by a credit against the borrower's loan balance the insurance premium paid by the borrower on a loan under the following circumstances:

(A) The premium attributable to each disbursement of a loan must be refunded if the loan check is returned uncashed to the lender.

(B) The premium or an appropriate prorated amount of the premium must be refunded by application to the borrower's loan balance if--

(1) The loan or a portion of the loan is returned by the school to the lender in order to comply with the Act or with applicable regulations;

(2) Within 120 days of disbursement, the loan or a portion of the loan is repaid or returned, unless--

(i) the borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(ii) the borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with Sec. 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(3) Within 120 days of disbursement, the loan check has not been negotiated; or

(4) Within 120 days of disbursement, the loan proceeds disbursed by electronic funds transfer or master check in accordance with Sec. 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school.

(11) *Payments for lender referral service.* (i) The guaranty agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in and make FFEL loans (other than Stafford loans that do not qualify for interest benefits) to all eligible students referred under a qualified lender referral service.

(ii) For purposes of this paragraph, the term qualified lender referral service means a lender referral service offered by a guaranty agency under which the agency refers to a participating lender each eligible student applying for the service who is either a resident of the State in which the agency is the principal guaranty agency or attending a school in that State and who has sought and been unable to find a lender willing to make a FFEL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(iii) The Secretary will pay a lender referral fee to each guaranty agency with whom the Secretary has a lender referral agreement, an amount equal to 0.5 percent of the principal amount of a loan made as a result of the agency's referral service.

(12) *Administrative fee for Consolidation loans.* The guaranty agency may charge a lender a fee, not to exceed $50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation Loan program.

(13) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guaranty agency may require a lender to pay to the guaranty agency up to 50 percent of the fee the lender charges a borrower under Sec. 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate. If it charges the fee, the agency must charge the same fee to all lenders that refinance under this paragraph.

(14) *Guaranty liability.* The guaranty agency shall guarantee--

(i) 100 percent of the unpaid principal balance of each loan guaranteed for loans disbursed before October 1, 1993; and

(ii) Not more than 98 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after October 1, 1993.

(15) *Guaranty agency verification of default data.* A guaranty agency must respond to an institution's written request for verification of its default rate data for purposes of an appeal pursuant to 34 CFR 668.15(g)(1)(i) within 15 working days of the date the agency receives the institution's written request pursuant to 34 CFR 668.15(g)(7), and simultaneously provide a copy of that response to the Secretary's designated Department official.

(16) *Guaranty agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(17) *Loan assignment.* (i) Except as provided in paragraph (b)(16)(iii) of this section, the guaranty agency must allow a loan to be assigned only if the loan is fully disbursed and is assigned to--

(A) An eligible lender;

(B) A guaranty agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition, or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closes;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of a guarantee or a reinsurance claim payment made on a loan that was ineligible for the payment;

(D) A Federal or State agency or an organization or corporation acting on behalf of such an agency and acting as a conservator, liquidator, or receiver of an eligible lender; or

(E) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(iii) The guaranty agency must allow a loan to be assigned under paragraph (b)(16)(i) of this section, following the first disbursement of the loan if the assignment does not result in a change in the identity of the party to whom payments must be made.

(18) *Transfer of guarantees.* Except in the case of a transfer of guarantee requested by a borrower seeking a transfer to secure a single guarantor, the guaranty agency may transfer its guarantee obligation on a loan to another guaranty agency, only with the approval of the Secretary, the transferee agency, and the holder of the loan.

(19) *Standards and procedures.* (i) The guaranty agency shall establish, disseminate to concerned parties, and enforce standards and procedures for--

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(d) of the Act and have a written lender agreement with the agency;

(B) School and lender participation in its program;

(C) Limitation, suspension, termination of school and lender participation;

(D) Emergency action against a participating school or lender;

(E) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(F) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guaranty agency shall ensure that its program and all participants in its program at all times meet the requirements of subparts B, C, D and F of this part.

(20) *Student status confirmation.* (i) The guaranty agency shall establish and use a system and procedures for monitoring the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum--

(A) Transmitting to the school, that according to the guaranty agency's records the student most recently attended, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(B) Reporting to the current holder of the loan within 60 days of the receipt of the completed report from the school any change in the student's enrollment status reported by the school that triggers--

(1) The beginning of the borrower's grace period; or

(2) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

(ii) The agency shall use the data elements and report format provided in Appendix B to this part, unless the Secretary notifies the guaranty agency that other data elements or a revised format may be used.

(21) *Submission of interest and special allowance information.* Upon the Secretary's request, the guaranty agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(22) *Submission of information for reports.* The guaranty agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by Sec. 682.414(b).

(23) *Guaranty agency transfer of information.* (i) A guaranty agency from which another guaranty agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guaranty agency as defined in Sec. 682.800(d) shall provide--

(A) The name and social security number of the student; and

(B) The annual loan amount and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(21)(i) of this section must be paid by the guaranty agency making the request.

(24) *Information of defaults.* The guaranty agency shall upon the request of an eligible institution furnish information with respect to students, including the names and addresses of such students, who were enrolled at the eligible institution and who are in default on the repayment of any loan guaranteed by that agency.

(25) *Information on loan sales or transfers.* The guaranty agency must, upon the request of an eligible school, furnish to the school last attended by the student, information with respect to the sale or transfer of a borrower's loan prior to the beginning of the repayment period, including--

(i) Notice of the assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party by which contact may be made with the holder concerning repayment of the loan; and

(iv) The telephone number of the assignee, or if the assignee uses a lender servicer, another appropriate number for borrower inquiries.

(26) *Third-party servicers.* The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under Sec. 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

(27) *Collection Charges and Late Fees on Defaulted FFEL loans being Consolidated.* (i) A guaranty agency may add collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest to a defaulted FFEL Program loan that is included in a Federal Consolidation loan.

(ii) When returning the proceeds from the consolidation of a defaulted loan to the Secretary, a guaranty agency may only retain the amount added to the borrower's balance pursuant to paragraph (b)(27)(i) of this section.

(28) *Change in agency's records system.* The agency shall provide written notification to the Secretary at least 30 days prior to placing its new guarantees or converting the records relating to its existing guaranty portfolio to an information or computer system that is owned by, or otherwise under the control of, an entity that is different than the party that owns or controls the agency's existing information or computer system. If the agency is soliciting bids from third parties with respect to a proposed conversion, the agency shall provide written notice to the Secretary as soon as the solicitation begins. The notifications described in this paragraph must include a concise description of the agency's conversion project and the actual or estimated cost of the project.

(c)(1) *Lender-of-last-resort.* The guaranty agency must ensure that it or an eligible lender described in section 435(d)(1)(D) of the Act serves as a lender-of-last-resort in the State in which it is the principal guaranty agency, as defined in Sec. 682.800(d).

(2) The lender-of-last-resort must make a subsidized Stafford loan to any eligible student who satisfies the lender's eligibility requirements and--

(i) Qualifies for interest benefits, pursuant to Sec. 682.301, for a loan amount of at least $200; and

(ii) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the Act may arrange for a loan required to be made under paragraph (c)(1) of this section to be made by another eligible lender.

(4) The guaranty agency must develop policies and operating procedures for its lender-of-last-resort program that provide for the accessibility of lender-of-last-resort loans. These policies and procedures must be submitted to the Secretary for approval as required under paragraph (d)(2) of this section. The policies and procedures for the agency's lender-of-last-resort program must ensure that--

(i) The guaranty agency will serve eligible students attending any eligible school;

(ii) The program establishes operating hours and methods of application designed to facilitate application by students; and

(iii) Information about the availability of loans under the program is made available to schools in the State;

(iv) Appropriate steps are taken to ensure that borrowers receiving loans under the program are appropriately counseled on their loan obligation;

(v) The guaranty agency will respond to a student within 60 days after the student submits an original complete application; and

(vi) Borrowers are not required to obtain more than two objections from eligible lenders prior to requesting assistance under the lender-of-last-resort program.

(d) *Review of forms and procedures.* (1) The guaranty agency shall submit to the Secretary its write-off criteria and procedures. The agency may not use these materials until the Secretary approves them.

(2) The guaranty agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, agreements, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guaranty agency shall use a common application form, promissory note, and other common forms approved by the Secretary.

(4) The guaranty agency must develop and implement appropriate procedures that provide for the granting of a student deferment as specified in Sec. 682.210(a)(6)(iv) and (c)(3) and require their lenders to use these procedures.

(5) The guaranty agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) *Prohibited inducements.* A guaranty agency may not--

(1) Offer directly or indirectly any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL loans;

(2)(i) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to--

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; or

(D) Offering to pay a lender, that does not hold loans guaranteed by the agency, a fee for each application forwarded for the agency's guarantee.

(ii) For the purposes of this section, the terms "premium", "inducement", and "incentive" do not include services directly related to the enhancement of the administration of the FFEL Program the guaranty agency generally provides to lenders that participate in its program. However, the terms "premium", "inducement", and "incentive" do apply to other activities specifically intended to secure a lender's participation in the agency's program.

(3) Conduct unsolicited mailings of student loan application forms to students enrolled in secondary school;

(4) Conduct fraudulent or misleading advertising concerning loan availability.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (b)(23) added April 29, 1994, effective July 1, 1994. (b) amended May 17, 1994, effective July 1, 1994. (b)(10)(vi)(B)(3) and (b)(14) amended and (b)(10)(iii) and (b)(27) added November 30, 1994, effective July 1, 1995. (b)(10)(vi)(B) amended December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996. (b)(27) revised and (b)(28) added November 27, 1996, effective July 1, 1997. (b)(10)(vi)(B) introductory language, (b)(10)(vi)(B)(1) and (b)(10)(vi)(B)(2) revised November 28, 1997, effective July 1, 1998.

Sec. 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, and false certification by a school of a borrower's eligibility for a loan, are set forth in this section.

(2) If a PLUS loan was obtained by two parents as co-makers or a Consolidation loan was obtained by a married couple, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) Except for a borrower's loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) of this section, a loan qualifies for payment under this section only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(4) For purposes of this section--

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with credit bureau reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and no determination has been made under paragraph (a)(4)(i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) *Death*. (1) If an individual borrower dies, or, on or after July 23, 1992 the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(2) In determining that a borrower (or student) has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable state law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be discharged only if the guaranty agency determines that other evidence establishes that the borrower (or student) has died.

(3) After receiving information indicating that the borrower (or student) has died, the lender, if it believes the information to be reliable, shall suspend any collection activity against the borrower and promptly request that the borrower's representative (or the student's parent in the case of a PLUS loan) provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which may not exceed 60 days, the lender shall diligently attempt to obtain documentation verifying the borrower's (or student's) death. If, despite diligent attempts, the lender is not able to confirm the borrower's (or student's) death within 60 days, the lender shall resume collection activity from the point that it had been discontinued and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower (or student) has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's (or student's) death.

(c) *Total and permanent disability*. (1) (i) If a lender determines that an individual borrower has become totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(ii) Except as provided in paragraph (c)(1)(iii)(A) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(iii)(A) For a Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (c)(1) (i) and (ii) of this section for all of the loans that were included in the Consolidation Loan if those loans had not been consolidated.

(B) For the purposes of discharging a loan under paragraph (c)(1)(iii)(A) of this section, provisions in paragraphs (c)(1) (i) and (ii) of this section apply to each loan included in the Consolidation Loan, even if the loan is not a FFEL Program loan.

(C) If requested, a borrower seeking to discharge a loan obligation under paragraph (c)(1)(iii)(A) of this section must provide the lender with the disbursement dates of the underlying loans if the lender does not possess that information.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly shall request that the borrower or the borrower's representative submit on a form provided or approved by the Secretary a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State that the borrower is totally and permanently disabled. The lender shall continue collection until it receives either the certification of total disability or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c)(4) of this section, after receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After being notified that the guaranty agency has paid a disability discharge claim, the lender shall return to the sender any payments received by the lender after the date that the borrower became totally and permanently disabled as certified by the physician. At the same time that the lender returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of disability.

(4) If the lender determines that a borrower who claims to be totally and permanently disabled is not in fact disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(d) *Closed school.*–(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled, closed, or the borrower (or student) withdrew from the school not more than 90 days prior to the date the school closed. This 90-day period may be extended if the Secretary determines that exceptional circumstances related to a school's closing would justify an extension.

(ii) For purposes of the closed school discharge authorized by this section–

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) The term "borrower" includes all endorsers on a loan; and

(C) A "school" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (d) of this section relieves the borrower of an existing or past obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (d) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (d) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (d) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (d) of this section must be reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under paragraph (d) of this section a borrower shall submit to the holder of the loan a written request and sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower shall state–

(i) Whether the student has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) That the borrower (or the student for whom a parent received a PLUS loan)–

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Did not complete the educational program at that school because the school closed while the student was enrolled or on an approved leave of absence in accordance with Sec. 682.605(c), or the student withdrew from the school not more than 90 days before the school closed; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(iii) That the borrower agrees to provide, upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (d) of this section; and

(iv) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (d)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (d) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (d) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall–

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who–

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (d) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (d) of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities*–(i) *Procedures applicable if a school closed on or after January 1, 1986, but prior to June 13, 1994.* (A) If a borrower received a loan for attendance at a school with a closure date on or after January 1, 1986, but prior to June 13, 1994, the loan may be discharged in accordance with the procedures specified in paragraph (d)(6)(i) of this section.

(B) If a loan subject to paragraph (d) of this section was discharged in part in accordance with the Secretary's "Closed School Policy" as authorized by section IV of Bulletin 89-G-159, the guaranty agency shall initiate the discharge of the remaining balance of the loan not later than August 13, 1994.

(C) A guaranty agency shall review its records and identify all schools that appear to have closed on or after January 1, 1986 and prior to June 13, 1994, and shall identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date.

(D) A guaranty agency shall notify the Secretary immediately if it determines that a school not previously known to have closed appears to have closed, and, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall–

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(E) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(F) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by June 13, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(i)(E) of this section.

(G) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(H) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after the date the agency–

(1) Made that determination based on information available to the guaranty agency;

(2) Was notified by the Secretary that the school had not closed;

(3) Was notified by the Secretary that the school had closed on a date that was more than 90 days after the borrower (or student) withdrew from the school;

(4) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(5) Received the borrower's completed application and sworn statement.

(I) If a borrower described in paragraph (d)(6)(i)(E) or (F) of this section fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(J) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(ii) *Procedures applicable if a school closed on or after June 13, 1994.* (A) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating a school may have closed. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has closed and, within 30 days after receiving information indicating that the school may have closed, report the results of its investigation to the Secretary concerning the date of the school's closure and whether a teach-out of the closed school's program was made available to students.

(B) If a guaranty agency determines that a school appears to have closed, it shall, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall–

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(C) If a loan identified under paragraph (d)(6)(ii)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(D) If a loan identified under paragraph (d)(6)(ii)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, within one year after identifying the borrower, attempt to locate the borrower and further determine the borrower's potential eligibility for a discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(ii)(B) of this section.

(E) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after the date the agency–

(1) Made that determination based on information available to the guaranty agency;

(2) Was notified by the Secretary that the school had not closed;

(3) Was notified by the Secretary that the school had closed on a date that was more than 90 days after the borrower (or student) withdrew from the school;

(4) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(5) Received the borrower's completed application and sworn statement.

(G) Upon receipt of a closed school discharge claim filed by a lender, the agency shall review the borrower's request and supporting sworn statement in the light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations, and shall take the following actions–

(1) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (d) of this section, it shall pay the claim in accordance with Sec. 682.402(h) not later than 90 days after the agency received the claim; or

(2) If the agency determines that the borrower does not qualify for a discharge, the agency shall, not later than 90 days after the agency received the claim, return the claim to the lender with an explanation of the reasons for its determination.

(H) If a borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender or guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The lender or guaranty agency may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(I) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(7) *Lender responsibilities.* (i) A lender shall comply with the requirements prescribed in paragraph (d) of this section. In the absence of specific instructions from a guaranty agency or the Secretary, if a lender receives information from a source it believes to be reliable indicating that an existing or former borrower may be eligible for a loan discharge under paragraph (d) of this section, the lender shall immediately notify the guaranty agency, and suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments).

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days after being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with Sec. 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (d)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a closed school claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all credit bureaus to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a closed school discharge has been denied, the lender shall resume collection and notify the borrower of the reasons for the denial. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(e) *False certification by a school of a student's eligibility to borrow and unauthorized disbursements.*–(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. For purposes of a false certification discharge, the term "borrower" includes all endorsers on a loan. A student's eligibility to borrow shall be considered to have been falsely certified by the school if the school–

(A) Certified the student's eligibility for a FFEL Program loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements described in 34 CFR Part 668 and section 484(d) of the Act, as applicable and as described in paragraph (e)(13) of this section; or

(B) Signed the borrower's name without authorization by the borrower on the loan application or promissory note.

(ii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (e)(1)(i) of this section relieves the borrower of an existing or past obligation to repay the loan certified by the school, and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was, otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (e) of this section is reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(v) Discharge under paragraph (e)(1)(ii) of this section qualifies the borrower for relief only with respect to the amount of the disbursement discharged.

(3) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under paragraph (e) of this section the borrower shall submit to the holder of the loan a written request and a sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower shall–

(i) State whether the student has made a claim with respect to the school's false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) In the case of a borrower requesting a discharge based on the school's defective testing of the student's ability to benefit, state that the borrower (or the student for whom a parent received a PLUS loan)–

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school;

(B) Was admitted to that school on the basis of ability to benefit from its training and did not meet the applicable requirements for admission on the basis of ability to benefit as described in paragraph (e)(13) of this section; and

(C) Withdrew from the school and did not find employment in the occupation for which the program was intended to provide training, or completed the training program for which the loan was made and made a reasonable attempt to obtain employment in the occupation for which the program was intended to provide training, and–

(1) Was not able to find employment in that occupation; or

(2) Obtained employment in that occupation only after receiving additional training that was not provided by the school that certified the loan;

(iii) In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note--

(A) State that the signature on either of those documents was not the signature of the borrower; and

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature;

(iv) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower shall–

(A) Certify that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so;

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature; and

(C) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student;

(v) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (e) of this section; and

(vi) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (e) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (e) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall–

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who–

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (e) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (e) of this section apply notwithstanding any provision of state law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities–general.* (i) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has falsely certified a student's eligibility and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under paragraph (e) of this section, the agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and inform the borrower of the procedures for requesting a discharge.

(iii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(iv) Upon receipt of a discharge claim filed by a lender or a request submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall have up to 90 days to determine whether the discharge should be granted. The agency shall review the borrower's request and supporting sworn statement in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations.

(v) A borrower's request for discharge and sworn statement may not be denied solely on the basis of failing to meet any time limits set by the lender or the guaranty agency.

(7) *Guaranty agency responsibilities with respect to a claim filed by a lender based on the borrower's assertion that he or she did not sign the loan application or the promissory note, or that the school failed to test, or improperly tested, the student's ability to benefit.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(7) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall, not later than 30 days after the agency makes that determination, pay the claim in accordance with Sec. 682.402(h) and–

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(7)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must–

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination–

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(7)(iii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower–

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(7)(iii)(B)(1) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vi) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(7)(iii)(B) of this section.

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(8) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination–

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must–

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay;

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(3) Refund to the borrower, within 30 days, all amounts paid by the borrower with respect to the loan disbursement that was discharged, including any charges imposed or costs incurred by the lender related to the discharged loan amount; and

(4) Refund to the Secretary, within 30 days, all interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(C) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with Sec. 682.402(h) and–

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must–

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination–

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iv)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower–

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iv)(B)(1) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(vi) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vii) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(8)(iv)(B) of this section.

(9) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based on the borrower's assertion that he or she did not sign the loan application or the promissory note, or that the school failed to test, or improperly tested, the student's ability to benefit.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(9) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge–

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan; and

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower–

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(v) The agency shall resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(10) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(10)(ii)(D)(2) of this section, and within 30 days after making that determination–

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount;

(D) Notify the lender to whom a claim payment was made that the lender must refund to the Secretary, within 30 days--

(1) All interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(2) The amount of the borrower's payments that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(iii)(C) of this section that represent borrower payments previously paid to the lender with respect to the loan disbursement that was discharged;

(E) Notify the lender to whom a claim payment was made that the lender must, within 30 days, reimburse the agency for the amount of the loan that was discharged, minus the amount of borrower payments made to the lender that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(iii)(C) of this section; and

(F) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to the loan disbursement that was discharged.

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination--

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency shall take the actions required under paragraphs (e)(9)(iii) through (v) if the agency determines that the borrower does not qualify for a discharge.

(11) *Guaranty agency responsibilities if a borrower requests a review by the Secretary.* (i) Within 30 days after receiving the borrower's request for review under paragraph (e)(7)(iii)(B)(2), (e)(8)(iv)(B)(2), (e)(9)(iii)(B), or (e)(10)(iv)(B) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (e) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraphs (e)(8)(iv) through (vii) or (e)(9)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (e)(7)(ii), (e)(8)(ii), (e)(8)(iii), (e)(9)(ii), (e)(10)(ii), or (e)(10)(iii) of this section, as applicable.

(12) *Lender Responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under paragraph (e) of this section, the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments) and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a claim with the guaranty agency in accordance with Sec. 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) The lender shall comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under paragraph (e) of this section.

(v) The lender shall review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender shall take the actions required under paragraphs (e)(8)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(ii). If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan, and may file a claim with the guaranty agency for reimbursement on that ground, but shall not report the loan to credit bureaus as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender shall be deemed to have agreed to the following–

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the proceeds of the loan were not received by the borrower or the student, the lender will comply with the requirements specified in paragraph (e)(8)(ii)(B) of this section.

(vi) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender shall notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(13) *Requirements for admission on the basis of ability to benefit.* (i) For periods of enrollment beginning between July 1, 1987 and June 30, 1991, a student who had a general education diploma or received one before the scheduled completion of the program of instruction is deemed to have the ability to benefit from the training offered by the school.

(ii) A student not described in paragraph (e)(13)(i) of this section is considered to have the ability to benefit from training offered by the school if the student–

(A) For periods of enrollment beginning prior to July 1, 1987, was determined by the school to have the ability to benefit from the school's training in accordance with the requirements of 34 CFR 668.6;

(B) For periods of enrollment beginning on or after July 1, 1987, achieved a passing grade on a test–

(1) Approved by the Secretary, for periods of enrollment beginning on or after July 1, 1991, or by the accrediting agency, for other periods; and

(2) Administered substantially in accordance with the requirements for use of the test; or

(C) Successfully completed a program of developmental or remedial education provided by the school.

(iii) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if–

(A) The school certified the eligibility of the student for a FFEL Program loan; and

(B) At the time of certification, the student would not meet the requirements for employment (in the student's State of residence) in the occupation for which the training program supported by the loan was intended because of a physical or mental condition, age, or criminal record or other reason accepted by the Secretary.

(f) *Bankruptcy*–(1) *General.* If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (d) through (i) of this section.

(2) *Suspension of collection activity.* If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and–

(i) Against any co-maker or endorser if the borrower has filed for relief under Chapters 12 or 13; and

(ii) Against any co-maker or endorser who has filed for relief in bankruptcy.

(3) *Determination of filing.* The lender shall determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other confirmation issued by the bankruptcy court.

(4) *Proof of claim.* Unless instructed otherwise by the guaranty agency, the lender shall file a proof of claim with the bankruptcy court within–

(i) 30 days after the lender receives a notice of first meeting of creditors unless, in the case of a proceeding under Chapter 7, the notice states that the borrower has no assets; or

(ii) 30 days after the lender receives a notice from the court stating that a Chapter 7 no-asset case has been converted to an asset case.

(5) *Filing of bankruptcy claim with the guaranty agency.* (i) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (e) of this section, if–

(A) The borrower has filed a petition for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under Chapters 7 or 11 of the Bankruptcy Code and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the filing of the petition for relief; or

(C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (d)(5)(i) of this section, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(g) *Claim procedures for a loan held by a lender–* (1) *Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, or bankruptcy claim:

(i) The original promissory note, or, if the lender no longer has the original promissory note, a copy of the note certified by the lender as a true and accurate copy;

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim–

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts.

(vi) In the case of a closed school claim, the documentation described in paragraph (d)(3) of this section, or any other documentation as the Secretary may require;

(vii) In the case of a false certification claim, the documentation described in paragraph (e)(3) of this section.

(2) *Filing deadlines.* A lender shall file a death, disability, closed school, false certification, or bankruptcy claim within the following periods:

(i) Within 60 days of the date on which the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died, or the lender determines that the borrower is totally and permanently disabled.

(ii) In the case of a closed school claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (d)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

(iii) In the case of a false certification claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (e)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

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(iv) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of--

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (d)(2) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(h) *Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency.*–(1) *General.* (i) The guaranty agency shall review a death, disability, or bankruptcy claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraph (f) of this section, not later than 45 days after the claim was filed by the lender.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (g) of this section to oppose the discharge of the loan by the bankruptcy court.

(iii) In the case of a closed school claim or a false certification claim based on the determination that the borrower did not sign the loan application, the promissory note, or the authorization for the electronic transfer of loan funds, or that the school failed to test, or improperly tested, the student's ability to benefit, the guaranty agency shall document its determination that the borrower is eligible for discharge under paragraphs (d) or (e) of this section and pay the borrower or the holder the amount determined under paragraph (h)(2) of this section.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss payable on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (f)(3) of this section.

(ii) The amount of loss payable to a lender on a closed school claim or on a false certification claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest determined in accordance with paragraph (h)(3) of this section.

(iii) In the case of a claim filed by a lender on an outstanding loan owed by the borrower, on the same date that the agency pays a claim to the lender, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(iv) In the case of a claim filed by a lender based on a request received from a borrower whose loan had been repaid in full by, or on behalf of the borrower to the lender, on the same date that the agency notifies the lender that the borrower is eligible for a closed school or false certification discharge, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(v) In the case of a loan that has been included in a Federal Consolidation Loan, the agency shall pay to the holder of the borrower's Consolidation Loan, an amount equal to--

(A) The amount paid on the loan by or on behalf of the borrower at the time the loan was paid through consolidation;

(B) The amount paid by the consolidating lender to the holder of the loan when it was repaid through consolidation; minus

(C) Any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source if those refunds or payments were--

(*1*) Received by the borrower or received by the holder and applied to the borrower's loan balance before the date the loan was repaid through consolidation; or

(*2*) Received by the borrower or received by the Consolidation Loan holder on or after the date the consolidating lender made a payment to the former holder to discharge the borrower's obligation to that former holder.

(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (g)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the receipt date by the lender of a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(i) *Guaranty agency participation in bankruptcy proceedings*--(1) *Undue hardship claims*. (i) In response to a petition filed with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guaranty agency shall determine on the basis of reasonably available information--

(A) Whether the first payment on the loan was due less than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of the petition for relief commencing the bankruptcy case; and

(B) Whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(ii) If the agency determines that repayment would not constitute an undue hardship, the agency shall then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iii) If the expected costs of opposing the discharge petition do not exceed one-third of the total amount owed on the loan, the agency shall--

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(iv) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13. The guaranty agency shall take the following actions when a petition for relief in bankruptcy under Chapters 11, 12, or 13 is filed:

(i) The agency is not required to respond to a proposed plan that--

(A) Provides for repayment of the full outstanding balance of the loan;

(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own records and documents filed by the debtor in the bankruptcy proceeding--

(A) What part of the loan obligation will be discharged under the plan as proposed;

(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11 U.S.C. 1129, 1225, or 1325, as applicable; and

(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if--

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and

(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful can reasonably be expected to equal or exceed the cost of litigating the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan or seeks but does not demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge or move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(3) Response by guaranty agency to plans proposed under Chapters 11, 12, and 13 for loans in repayment less than seven years. The guaranty agency shall take the following actions with regard to a loan that was in repayment for less than seven years (exclusive of applicable suspensions of the repayment period) when a petition for relief in bankruptcy under chapter 11, 12, or 13 was filed:

(i) If the debtor proposes a plan that is expected to end less than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan and demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge and move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(ii) If the debtor proposes a plan that is expected to end more than seven years (exclusive of applicable suspensions of the repayment period) after the first payment was due on the loan, the agency shall take the actions required under paragraph (g)(2) of this section.

(j) *Mandatory purchase by a lender of a loan subject to a bankruptcy claim.* (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender, unless the guaranty agency sells the loan to another lender, promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.

(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8)(B) or other applicable law.

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11 in a proceeding begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan, unless the court determined that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) on grounds of undue hardship.

(2) The lender may capitalize all outstanding interest accrued on a loan purchased under paragraph (j) of this section to cover any periods of delinquency prior to the bankruptcy action through the date the lender purchases the loan and receives the supporting loan documentation from the guaranty agency.

(k) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after--

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8)(B) with respect to a proceeding initiated under chapter 7 or chapter 11 begun less than 7 years (exclusive of any applicable suspension of the repayment period) after the first payment due date of the loan; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, bankruptcy, closed school, or false certification claim in an amount determined under Sec. 682.402(k)(5) on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if--

(i) The guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures in paragraphs (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

(iii) In the case of a Consolidation loan, the guaranty agency determines that the borrower (or each of the co-makers) has died, is determined to be totally and permanently disabled under Sec. 682.402(c), or has filed the petition for relief in bankruptcy within the maximum repayment period described in Sec. 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency under Sec. 682.410(b)(6)(x), except for closed school and false certification discharges; and

(v) The guaranty agency has exercised due diligence in the collection of the loan in accordance with the procedures established by the agency under Sec. 682.410(b)(6)(x), until the borrower (or the student for whom a parent obtained a

PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled or filed a Chapter 12 or Chapter 13 petition, or had the loan discharged in bankruptcy, or for closed school and false certification claims, the guaranty agency receives a request for discharge from the borrower or another party.

(3) [Reserved]

(4) Within 30 days of receiving reimbursement for a closed school or false certification claim, the guaranty agency shall pay--

(i) The borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder, guaranty agency, or the borrower from a tuition recovery fund, performance bond, or other third-party source; or

(ii) The amount determined under paragraph (h)(2)(iv) of this section to the holder of the borrower's Consolidation Loan.

(5) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during--

(i) For death, disability, or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) died, became totally and permanently disabled, or filed a petition for relief in bankruptcy until the Secretary authorizes payment; or

(ii) For closed school or false certification claims, the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the Secretary authorizes payment of the closed school or false certification claim.

(l) *Payments received after the Secretary's payment of a death, disability, closed school, false certification, or bankruptcy claim.* (1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall return 100 percent of these payments to the sender. The guaranty agency shall promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it shall notify the borrower that there is no obligation to repay a loan discharged on the basis of death, disability, bankruptcy, false certification, or closing of the school.

(2) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

(3) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (l)(1) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency shall remit all of those payments to the Secretary.

(m) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(A) with respect to loans guaranteed under the FFEL Program, an applicable suspension of the repayment period--

(1) Includes any period, including a period of deferment, during which the lender, at the request of the borrower, does not require the borrower to make payments on the loan;

(2) Begins on the date on which the borrower qualifies for the requested deferment as provided in Sec. 682.210(a)(5) or the lender grants the requested forbearance;

(3) Closes on the later of the date on which--

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received, if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended;

(4) Includes the period between the end of the borrower's grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender;

(5) Includes the period between the filing of the petition for relief and the date on which the proceeding is completed or dismissed, unless payments have been made during that period in amounts sufficient to meet the amount owed under the repayment schedule in effect when the petition was filed.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section amended April 29, 1994, effective June 13, 1994. (e)(13) amended June 8, 1994, effective June 13, 1994. OMB control number amended September 7, 1994, effective September 7, 1994. (e)(1)(i)(A), (e)(13) heading, and (e)(13)(iii) amended November 29, 1994, effective July 1, 1995. (e)(3)(iv), (e)(8), and (e)(10) amended November 30, 1994, effective July 1, 1995. (c)(3), (l)(1), (l)(2), and (l)(3) amended December 1, 1995, effective July 1, 1996. (c)(1) and (k)(2)(iii) revised November 28, 1997, effective July 1, 1998.

Sec. 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guaranty agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to--

(1) A State guaranty agency; or

(2) 1 or more private nonprofit guarantee agencies in a State if, during a fiscal year--

(i) The State does not have a guaranty agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guaranty agency--

(A) Agrees to establish at least 1 office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution and that it does not have any substantial affiliation with an eligible educational institution.

(b) A guaranty agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guaranty agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guaranty agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guaranty agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guaranty agency.

(e) In the case of a private nonprofit guaranty agency, the repayment of advances is determined separately for each State for which the agency has received in advance under this section, in accordance with section 422(c)(4) of the Act.

(f) A guaranty agency shall return advances provided under this section in accordance with the provisions of sections 422(c) and (d) of the Act.

(Authority: 20 U.S.C. 1072, 1082)

Sec. 682.404 Federal reinsurance agreement.

(a) *General.* (1)(i) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 98 percent of its losses on default claim payments to lenders.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the Secretary reimburses a guaranty agency for 100 percent of its losses on default claim payments--

(A) For loans made prior to October 1, 1993;

(B) For loans made under an approved lender-of-last-resort program;

(C) For loans transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(D) For a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976 for five consecutive fiscal years beginning with the first year of its operation.

(2) For purposes of this section--

(i) Losses means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by or on behalf of the borrower after default but before the Secretary reimburses the agency;

(ii) Preclaims assistance means collection assistance made available to the lender by the guaranty agency no later than the 90th day of delinquency. This assistance must include collection activities that are at least as forceful as the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the guaranty agency of at least 3 collection activities, one of which is a letter designed to encourage the borrower to begin or resume repayment. As part of their preclaims assistance, guaranty agencies must provide counseling and consumer information (in written or other format) to the borrower by the 10th working day after the agency receives the lender's request for preclaims assistance informing the borrower of all of the borrower's options to avoid default, including the availability of consolidating delinquent loans under the FFEL Program or the Federal Direct Consolidation Loan Program.

(iii) Supplemental preclaims assistance means collection assistance provided to the lender by the guaranty agency that involves the initiation by the agency of at least two collection activities designed to encourage the borrower to begin or resume payment that is begun on or after the 120th day of delinquency.

(3)(i) If an account has been subject to supplemental preclaims assistance and is not submitted as a default claim by the lender to the guaranty agency by the 150th day after the loan becomes 120 days delinquent, the Secretary will pay the guaranty agency $50.

(ii) If a guaranty agency contracts with an outside entity to perform any supplemental preclaims assistance activity, that entity may not--

(A) Hold or service the loan;

(B) Own, control, or share common ownership with the holder or servicer of the loan; or

(C) Hold a contract with the agency to perform collection services on the loan in the event of default.

(iii) For purposes of paragraph (a)(3)(i) of this section, an "account" includes 1 or more FFEL programs loans that were--

(A) Made to the same borrower;

(B) Held by the same lender;

(C) Guaranteed by the same guaranty agency;

(D) Subject to preclaims assistance by the same agency; and

(E) Covered by the same supplemental preclaims assistance request.

(4) A guaranty agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(5) If a lender has requested preclaims assistance as described in paragraph (a)(2)(ii) of this section, upon request of the school, the agency shall notify the school for attendance at which the borrower received the loan of the lender's request by providing the school with a copy of that request, or by other means.

(b) *Reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals--

(i) 90 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 88 percent of its losses for loans made on or after October 1, 1993.

(2) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals--

(i) 80 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 78 percent of its losses for loans made on or after October 1, 1993.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year does not include amounts paid on claims by the guaranty agency--

(i) On loans considered in default under Sec. 682.412(e);

(ii) Under a policy established by the agency that is consistent with Sec. 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary;

(iv) On loans made under a guaranty agency's approved lender-of-last-resort program.

(4) For purposes of this section, amount of loans in repayment means--

(i) The sum of--

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which--

(A) The loan guarantee was canceled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin and remains in deferment status;

(F) Reinsurance coverage has been lost and cannot be regained; and

(G) The agency paid claims, excluding the amount of those claims--

(1) Paid under Sec. 682.412(e);

(2) Paid under a policy established by the agency that is consistent with Sec. 682.509(a)(1); or

(3) Paid at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guaranty agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guaranty agency after the date the quarterly report is due until the guaranty agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under Sec. 682.209(e), (f) and (h), a guaranty agency shall pay to the Secretary during each fiscal year in quarterly installments a reinsurance fee equal to--

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guaranty agency transfers its guarantee obligation on the loan to another guaranty agency.

(3) The guaranty agency shall pay the reinsurance fee required by paragraph (d)(1) of this section due the Secretary for each calendar quarter ending March 31, June 30, September 30, and December 31, within 90 days after the end of the applicable quarter or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* In deciding whether to enter into or extend a reinsurance agreement, or,if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of--

(1) Efforts by the guaranty agency and the lenders to which it provides guarantees to collect outstanding loans as required by Sec. 682.410(b)(6) or (7), and Sec. 682.411;

(2) Efforts by the guaranty agency to make FFEL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guaranty agency's program operations.

(f) *Application of borrower payments.* A payment made to a guaranty agency by a borrower on a defaulted loan must be applied first to the collection costs incurred to collect that amount and then to other incidental charges, such as late charges, then to accrued interest and then to principal.

(g) *Federal share of borrower payments.* (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For purposes of this section, the Secretary's equitable share means that portion of borrower payments that remains after the agency has deducted--

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the reinsurance payment was made by the Secretary; and

(ii) 30 percent of borrower payments.

(3) Unless the Secretary approves otherwise, the guaranty agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 45 days of its receipt of the payments.

(h) *Nondiscrimination.* (1) A guaranty agency may not engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular participating school within any State served by the guaranty agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guaranty agency is deemed to be serving a State if it guarantees a loan that is--

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(i) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to--

(1) Promote the purposes of the FFEL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a)(5) amended May 17, 1994, effective July 1, 1994. (a)(1) and (b) amended November 30, 1994, effective July 1, 1995. OMB control number republished June 15, 1995, effective July 1, 1995. (a)(2)(ii) revised November 27, 1996, effective July 1, 1997. (f) revised November 27, 1996, effective January 1, 1998 and applicable for payments received on or after January 1, 1998.

Sec. 682.405 Loan rehabilitation agreement.

(a) *General.* (1) A guaranty agency that has a basic program agreement must enter into a loan rehabilitation agreement with the Secretary. The guaranty agency must establish a loan rehabilitation program for all borrowers with an enforceable promissory note for the purpose of rehabilitating defaulted loans so that the loan may be purchased, if practicable, by an eligible lender and removed from default status.

(2) A loan is considered to be rehabilitated only after the borrower has made one voluntary reasonable and affordable full payment each month and the payment is received by a guaranty agency or its agent within 15 days of the scheduled due date for 12 consecutive months in accordance with this section, and the loan has been sold to an eligible lender.

(3) After the loan has been rehabilitated, the borrower regains all benefits of the program, including any remaining deferment eligibility under section 428(b)(1)(M) of the Act, from the date of the rehabilitation.

(4) A borrower who wishes to rehabilitate a loan on which a judgment has been entered must sign a new promissory note prior to the sale of the loan to an eligible lender.

(b) *Terms of agreement.* In the loan rehabilitation agreement, the guaranty agency agrees to ensure that its loan rehabilitation program meets the following requirements at all times:

(1) A borrower may request the rehabilitation of the borrower's defaulted FFEL loan held by the guaranty agency. The borrower must make one voluntary full payment each month for 12 consecutive months to be eligible to have the defaulted loans rehabilitated. For purposes of this section, "full payment" means a reasonable and affordable payment agreed to by the borrower and the agency. The required amount of such monthly payment may be no more than is reasonable and affordable based upon the borrower's total financial circumstances. Voluntary payments are those made directly by the borrower regardless of whether there is a judgment against the borrower, and do not include payments obtained by income

tax off-set, garnishment, or income or asset execution. A guaranty agency must attempt to secure a lender to purchase the loan at the end of the twelve-(12-)month payment period.

(i) For purposes of this section, the determination of reasonable and affordable must--

(A) Include a consideration of the borrower's and spouse's disposable income and reasonable and necessary expenses including, but not limited to, housing, utilities, food, medical costs, work-related expenses, dependent care costs and other Title IV repayment;

(B) Not be a required minimum payment amount, e.g. $50, if the agency determines that a smaller amount is reasonable and affordable based on the borrower's total financial circumstances. The agency must include documentation in the borrower's file of the basis for the determination if the monthly reasonable and affordable payment established under this section is less than $50.00 or the monthly accrued interest on the loan, whichever is greater. However, $50.00 may not be the minimum payment for a borrower if the agency determines that a smaller amount is reasonable and affordable; and

(C) Be based on the documentation provided by the borrower or other sources including, but not be limited to--

(1) Evidence of current income (e.g., proof of welfare benefits, Social Security benefits, child support, veterans' benefits, Supplemental Security Income, Workmen's Compensation, two most recent pay stubs, most recent copy of U.S. income tax return, State Department of Labor reports);

(2) Evidence of current expenses (e.g., a copy of the borrower's monthly household budget, on a form provided by the guaranty agency); and

(3) A statement of the unpaid balance on all FFEL loans held by other holders.

(ii) The agency must include any payment made under Sec. 682.401(b)(4) in determining whether the 12 consecutive payments required under paragraph (b)(1) of this section have been made.

(iii) A borrower may request that the monthly payment amount be adjusted due to a change in the borrower's total financial circumstances only upon providing the documentation specified in paragraph (b)(1)(i)(C) of this section.

(iv) A guaranty agency must provide the borrower with a written statement confirming the borrower's reasonable and affordable payment amount, as determined by the agency, and explaining any other terms and conditions applicable to the required series of payments that must be made before a borrower's account can be considered for repurchase by an eligible lender. The statement must inform borrowers of the consequences of having their loans rehabilitated (e.g. credit clearing, possibility of increased monthly payments). The statement must inform the borrower of the amount of the collection costs to be added to the unpaid principal at the time of the sale. The collection costs may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of the sale.

(v) A guaranty agency must provide the borrower with an opportunity to object to terms of the rehabilitation of the borrower's defaulted loan.

(2) The guaranty agency must report to all national credit bureaus within 90 days of the date the loan was rehabilitated that the loan is no longer in a default status.

(3) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans made under the same loan type and provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the guaranty agency. For the purposes of the maximum loan repayment period, the lender must treat the first payment made under the 12 consecutive payments as the first payment under the 10-year maximum.

(Authority: 20 U.S.C. 1078-6)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section added June 28, 1994, effective July 1, 1995. OMB control number added June 12, 1995, effective July 1, 1995.

Sec. 682.406 Conditions of reinsurance coverage.

(a) A guaranty agency is entitled to reinsurance payments on a loan only if--

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds--

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with

Sec. 682.207(b)(1)(ii)(B) and (C) have been released from the restricted account maintained by the school within 120 days after disbursement;

(3) The lender provided--

(i) An accurate collection history to the guaranty agency with the default claim filed on the loan sufficient to support guarantor review for claim payment showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of Sec. 682.411, including collection efforts against each endorser; and

(ii) A payment history that supports the claim payment amount.

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 45 days following payment of a default claim to the lender, which must take place no earlier than 90 days following default in the case of a loan payable in monthly installments, or no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with Sec. 682.410(b)(6) or (7);

(12) The agency and lender complied with all other Federal requirements with respect to the loan including the payment of origination fees and compliance with all preclaims assistance requirements in Sec. 682.404(a)(2)(ii);

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of Sec. 682.409; and

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under Sec. 682.411(g) to locate the borrower through the use of reasonable skip-tracing techniques.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(5) of this section is set forth in Appendix D to this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993. (a)(3) amended May 17, 1994, effective July 1, 1994. (a)(2)(ii) amended November 30, 1994, effective July 1, 1995. (a)(12) revised November 27, 1996, effective July 1, 1997.

Sec. 682.407 [Removed and reserved]

Note: Section removed and reserved November 30, 1994, effective July 1, 1995.

Sec. 682.408 Loan disbursement through an escrow agent.

(a) *General.* (1) A guaranty agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford, SLS, and PLUS loan proceeds disbursed by an eligible lender other than a school, State lender, or a State agency or instrumentality, and transmitting those proceeds to the borrower's school if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that--

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and Sec. 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to--

(A) Transmit the proceeds according to the note evidencing the loan;

(B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement;

(C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(D) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to Sec. 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of FFEL loan proceeds by the escrow agent.* (1) The escrow agent shall transmit Stafford and SLS loan proceeds received from a lender under this section to a school in accordance with the requirements of Sec. 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(2) The escrow agent shall transmit PLUS loan proceeds received from a lender under this section to a borrower in accordance with the requirements of Sec. 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

Sec. 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a)1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary will direct a guaranty agency to promptly assign to the Secretary any loan held by the agency on which the agency has received payment under Sec. 682.402(d), 682.402(i), or 682.404. An orderly transition from the FFEL program to the Federal Direct Student Loan (FDSL) Program and the collection of unpaid loans owed by Federal employees by Federal salary offset are, among other things, deemed to be in the Federal fiscal interest. Unless the Secretary notifies an agency, in writing, that other loans must be assigned to the Secretary, an agency must assign any loan that meets all of the following criteria as of April 15 of each year:

(i) The unpaid principal balance is at least $100.

(ii) For each of the two fiscal years following the fiscal year in which these regulations are effective, the loan, and any other loans held by the agency for that borrower, have been held by the agency for at least four years; for any subsequent fiscal year such loan must have been held by the agency for at least five years.

(iii) A payment has not been received on the loan in the last year.

(iv) A judgment has not been entered on the loan against the borrower.

(2) If the agency fails to meet a fiscal year recovery rate standard under paragraph (a)(2)(ii) of this section for a loan type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to assign in addition to those loans described in paragraph (a)(1) of this section, loans in amounts needed to satisfy the requirements of paragraph (a)(2)(iii) or (a)(3)(i) of this section.

(i) *Calculation of fiscal year loan type recovery rate.* A fiscal year loan type recovery rate for an agency is determined by dividing the amount collected on defaulted loans, including collections by Federal Income Tax Refund Offset, for each loan program (i.e., the Stafford, PLUS, SLS, and Consolidation loan programs) by the agency for loans of that program (including payments received by the agency on loans under Sec. 682.401(b)(4) and Sec. 682.409 and the amounts of any loans purchased from the guaranty agency by an eligible lender) during the most recent fiscal year for which data are available by the total of principal and interest owed to an agency on defaulted loans for each loan program at the beginning of the same fiscal year, less accounts permanently assigned to the Secretary through the most recent fiscal year.

(ii) *Fiscal year loan type recovery rates standards.* (A) If, in each of the two fiscal years following the fiscal year in which these regulations are effective, the fiscal year loan type recovery rate for a loan program for an agency is below 80 percent of the average recovery rate of all active guaranty agencies in each of the same two fiscal years for that program type, and the Secretary determines that additional assignments are necessary to protect the Federal fiscal interest, the Secretary may require the agency to make additional assignments in accordance with paragraph (a)(2)(iii) of this section.

(B) In any subsequent fiscal year the loan type recovery rate standard for a loan program must be 90 percent of the average recovery rate of all active guaranty agencies.

(iii) *Non-achievement of loan type recovery rate standards.* (A) Unless the Secretary determines under paragraph (a)(2)(iv) of this section that protection of the Federal fiscal interest requires that a lesser amount be assigned, upon notice from the Secretary, an agency with a fiscal year loan type recovery rate described in paragraph (a)(2)(ii) of this section must promptly assign to the Secretary a sufficient amount of defaulted loans, in addition to loans to be assigned in accordance with paragraph (a)(1) of this section, to cause the fiscal year loan type recovery rate of the agency that fiscal year to equal or exceed the average rate of all agencies described in paragraph (a)(2)(ii) of this section when recalculated to exclude from the denominator of the agency's fiscal year loan type recovery rate the amount of these additional loans.

(B) The Secretary, in consultation with the guaranty agency, may require the amount of loans to be assigned under paragraph (a)(2) of this section to include particular categories of loans that share characteristics that make the performance of the agency fall below the appropriate percentage of the loan type recovery rate as described in paragraph (a)(2)(ii) of this section.

(iv) *Calculation of loan type recovery rate standards.* The Secretary, within 30 days after the date for submission of the second quarterly report from all agencies, makes available to all agencies a mid-year report, showing the recovery rate for each agency and the average recovery rate of all active guaranty agencies for each loan type. In addition, the Secretary, within 120 days after the beginning of each fiscal year, makes available a final report showing those rates and the average rate for each loan type for the preceding fiscal year.

(3)(i) *Determination that the protection of the Federal fiscal interest requires assignments.* Upon petition by an agency submitted within 45 days of the notice required by paragraph (a)(2)(iii)(A) of this section, the Secretary may determine that protection of the Federal fiscal interest does not require assignment of all loans described in paragraph (a)(1) of this section or of loans in the full amount described in paragraph (a)(2)(iii) of this section only after review of the agency's petition. In making this determination, the Secretary considers all relevant information available to him (including any information and documentation obtained by the Secretary in reviews of the agency or submitted to the Secretary by the agency) as follows:

(A) For each of the two fiscal years following the fiscal year in which these regulations are effective, the Secretary considers information presented by an agency with a fiscal year loan type recovery rate above the average rate of all active agencies to demonstrate that the protection of the Federal fiscal interest will be served if any amounts of loans of the loan type required to be assigned to the Secretary under paragraph (a)(1) of this section are retained by that agency. For any subsequent fiscal year, the Secretary considers information presented by an agency with a fiscal year recovery rate 10 percent above the average rate of all active agencies.

(B) The Secretary considers information presented by an agency that is required to assign loans under paragraph (a)(2) of this section to demonstrate that the protection of the Federal fiscal interest will be served if the agency demonstrates that its compliance with Sec. 682.401(b)(4) and Sec. 682.405 has reduced substantially its fiscal year loan type recovery rate or rates or if the agency is not required to assign amounts of loans that would otherwise have to be assigned.

(C) The information provided by an agency pursuant to paragraphs (a)(3)(i)(A) and (B) of this section may include, but is not limited to the following:

(1) The fiscal year loan type recovery rate within such school sectors as the Secretary may designate for the agency, and for all agencies.

(2) The fiscal year loan type recovery rate for loans for the agency and for all agencies categorized by age of the loans as the Secretary may determine.

(3) The performance of the agency, and all agencies, in default aversion.

(4) The agency's performance on judgment enforcement.

(5) The existence and use of any state or guaranty agency-specific collection tools.

(6) The agency's level of compliance with Secs. 682.409 and 682.410(b)(6).

(7) Other factors that may affect loan repayment such as State or regional unemployment and natural disasters.

(ii) *Denial of an agency's petition.* If the Secretary does not accept the agency's petition, the Secretary provides, in writing, to the agency the Secretary's reasons for concluding that the Federal fiscal interest is best protected by requiring the assignment.

(b)(1) A guaranty agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guaranty agency any compensation for a loan assigned under this section.

(2) The guaranty agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

(2) The guaranty agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option--

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of the activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application.

(v) A payment history for the loan, as described in Sec. 682.414(a)(1)(ii)(C).

(vi) A collection history for the loan, as described in Sec. 682.414(a)(1)(ii)(D).

(5) The agency may submit certified copies of required documents in lieu of originals if no originals exist.

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c)(4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under Sec. 682.410(b)(3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a) and (c)(1) amended and (c)(6) added June 28, 1994, effective July 1, 1995. OMB control number republished June 12, 1995, effective July 1, 1995.

Sec. 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements* (1) *Reserve fund assets.* A guaranty agency shall establish and maintain a reserve fund to be used solely for its activities as a guaranty agency under the FFEL Program ("guaranty activities"). The guaranty agency shall credit to the reserve fund--

(i) The total amount of insurance premiums collected;

(ii) Funds received from a State for the agency's guaranty activities, including matching funds under section 422(a) of the Act;

(iii) Federal advances obtained under sections 422(a) and (c) of the Act;

(iv) Federal payments for default, bankruptcy, death, disability, closed schools, and false certification claims;

(v) Supplemental preclaims assistance payments;

(vi) Administrative cost allowance payments received under Sec. 682.407 and transitional support payments received under section 458(a) of the Act;

(vii) Funds collected by the guaranty agency on FFEL Program loans on which a claim has been paid;

(viii) Investment earnings on the reserve fund; and

(ix) Other funds received by the guaranty agency from any source for the agency's guaranty activities.

(2) *Uses of reserve fund assets.* A guaranty agency may not use the assets of the reserve fund established under paragraph (a)(1) of this section to pay costs prohibited under Sec. 682.418, but shall use the assets of the reserve fund to pay only--

(i) Insurance claims;

(ii) Costs that are reasonable, as defined under Sec. 682.410(a)(11)(iii), and that are ordinary and necessary for the agency to fulfill its responsibilities under the HEA, including costs of collecting loans, providing preclaims assistance, monitoring enrollment and repayment status, and carrying out any other guaranty activities. Those costs must be--

(A) Allocable to the FFEL Program;

(B) Not higher than the agency would incur under established policies, regulations, and procedures that apply to any comparable non-Federal activities of the guaranty agency;

(C) Not included as a cost or used to meet cost sharing or matching requirements of any other federally supported activity, except as specifically provided by Federal law;

(D) Net of all applicable credits; and

(E) Documented in accordance with applicable legal and accounting standards;

(iii) Lenders for their participation in a loan referral service under section 428(e) of the Act;

(iv) The Secretary's equitable share of collections;

(v) Federal advances and other funds owed to the Secretary;

(vi) Reinsurance fees;

(vii) Insurance premiums related to cancelled loans;

(viii) Borrower refunds, including those arising out of student or other borrower claims and defenses;

(ix)(A) The repayment, on or after December 29, 1993, of amounts credited under paragraphs (a)(1)(ii) or (a)(1)(ix) of this section, if the agency provides the Secretary 30 days prior notice of the repayment and demonstrates that--

(1) These amounts were originally received by the agency under appropriate contemporaneous documentation specifying that receipt was on a temporary basis only;

(2) The objective for which these amounts were originally received by the agency has been fully achieved; and

(3) Repayment of these amounts would not cause the agency to fail to comply with the minimum reserve levels provided by paragraph (a)(10) of this section, except that the Secretary may, for good cause, provide written permission for a payment that meets the other requirements of this paragraph (a)(2)(ix)(A).

(B) The repayment, prior to December 29, 1993, of amounts credited under paragraphs (a)(1)(ii) or (a)(1)(ix) of this section, if the agency demonstrates that--

(1) These amounts were originally received by the agency under appropriate contemporaneous documentation that receipt was on a temporary basis only; and

(2) The objective for which these amounts were originally received by the agency has been fully achieved.

(x) Any other costs or payments ordinary and necessary to perform functions directly related to the agency's responsibilities under the HEA and for their proper and efficient administration;

(xi) Notwithstanding any other provision of this section, any other payment that was allowed by law or regulation at the time it was made, if the agency acted in good faith when it made the payment or the agency would otherwise be unfairly prejudiced by the nonallowability of the payment at a later time; and

(xii) Any other amounts authorized or directed by the Secretary.

(3) *Accounting basis.* Except as approved by the Secretary, a guaranty agency shall credit the items listed in paragraph (a)(1) of this section to its reserve fund upon their receipt, without any deferral for accounting purposes, and shall deduct the items listed in paragraph (a)(2) of this section from its reserve fund upon their payment, without any accrual for accounting purposes.

(4) *Accounting records.* (i) The accounting records of a guaranty agency must reflect the correct amount of sources and uses of funds under paragraph (a) of this section.

(ii) A guaranty agency may reverse prior credits to its reserve fund if--

(A) The agency gives the Secretary prior notice setting forth a detailed justification for the action;

(B) The Secretary determines that such credits were made erroneously and in good faith; and

(C) The Secretary determines that the action would not unfairly prejudice other parties.

(iii) A guaranty agency shall correct any other errors in its accounting or reporting as soon as practicable after the errors become known to the agency.

(iv) If a general reconstruction of a guaranty agency's historical accounting records is necessary to make a change under paragraphs (a)(4)(ii) and (a)(4)(iii) of this section or any other retroactive change to its accounting records, the agency may make this reconstruction only upon prior approval by the Secretary and without any deduction from its reserve fund for the cost of the reconstruction.

(5) *Investments.* The guaranty agency shall exercise the level of care required of a fiduciary charged with the duty of investing the money of others when it invests the assets of the reserve fund described in paragraph (a)(1) of this section. It may invest these assets only in low-risk securities, such as obligations issued or guaranteed by the United States or a State.

(6) *Development of assets.* (i) If the guaranty agency uses in a substantial way for purposes other than the agency's guaranty activities any funds required to be credited to the reserve fund under paragraph (a)(1) of this section or any assets derived from the reserve fund to develop an asset of any kind and does not in good faith allocate a portion of the cost of developing and maintaining the developed asset to funds other than the reserve fund, the Secretary may require the agency to--

(A) Correct this allocation under paragraph (a)(4)(iii) of this section; or

(B) Correct the recorded ownership of the asset under paragraph (a)(4)(iii) of this section so that--

(1) If, in a transaction with an unrelated third party, the agency sells or otherwise derives revenue from uses of the asset that are unrelated to the agency's guaranty activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds or revenue equal to the fair percentage of the total development cost of the asset paid with the reserve fund monies or provided by assets derived from the reserve fund; or

(2) If the agency otherwise converts the asset, in whole or in part, to a use unrelated to its guaranty activities, the agency promptly shall deposit into the reserve fund described in paragraph (a)(1) of this section a fair percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use.

(ii) If the agency uses funds or assets described in paragraph (a)(6)(i) of this section in the manner described in that paragraph and makes a cost and maintenance allocation erroneously and in good faith, it shall correct the allocation under paragraph (a)(4)(iii) of this section.

(7) *Third-party claims.* If the guaranty agency has any claim against any other party to recover funds or other assets for the reserve fund, the claim is the property of the United States.

(8) *Related-party transactions.* All transactions between a guaranty agency and a related organization or other person that involve funds required to be credited to the agency's reserve fund under paragraph (a)(1) of this section or assets derived from the reserve fund must be on terms that are not less advantageous to the reserve fund than would have been negotiated on an arm's-length basis by unrelated parties.

(9) *Scope of definition.* The provisions of this Sec. 682.410(a) define reserve funds and assets for purposes of sections 422 and 428 of the Act. These provisions do not, however, affect the Secretary's authority to use all funds and assets of the agency pursuant to section 428(c)(9)(F)(vi) of the Act.

(10) Minimum reserve fund level. The guaranty agency must maintain a current minimum reserve level of not less than--

(i) .5 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1993;

(ii) .7 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1994;

(iii) .9 percent of the amount of loans outstanding, for the fiscal year of the agency that begins in calendar year 1995; and

(iv) 1.1 percent of the amount of loans outstanding, for each fiscal year of the agency that begins on or after January 1, 1996.

(11) *Definitions.* For purposes of this section--

(i) *Reserve fund level* means--

(A) The total of reserve fund assets as defined in paragraph (a)(1) of this section;

(B) Minus the total amount of the reserve fund assets used in accordance with paragraphs (a)(2) and (a)(3) of this section; and

(ii) *Amount of loans outstanding* means--

(A) The sum of--

(1) The original principal amount of all loans guaranteed by the agency; and

(2) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(B) Minus the original principal amount of all loans on which--

(1) The loan guarantee was cancelled;

(2) The loan guarantee was transferred to another agency;

(3) Payment in full has been made by the borrower;

(4) Reinsurance coverage has been lost and cannot be regained; and

(5) The agency paid claims.

(iii) *Reasonable cost* means a cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The burden of proof is upon the guaranty agency, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. In determining reasonableness of a given cost, consideration must be given to--

(A) Whether the cost is of a type generally recognized as ordinary and necessary for the proper and efficient performance and administration of the guaranty agency's responsibilities under the HEA;

(B) The restraints or requirements imposed by factors such as sound business practices, arms-length bargaining, Federal, State, and other laws and regulations, and the terms and conditions of the guaranty agency's agreements with the Secretary; and

(C) Market prices of comparable goods or services.

(b) *Administrative requirements*--(1) *Independent audits.* The guaranty agency shall arrange for an independent financial and compliance audit of the agency's FFEL program as follows:

(i) With regard to a guaranty agency that is an agency of a State government, an audit must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(ii) With regard to a guaranty agency that is a nonprofit organization, an audit must be conducted in accordance with OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations and 34 CFR 74.61(h)(3). If a nonprofit guaranty agency meets the criteria in Circular A-133 to have a program specific audit, and chooses that option, the program specific audit must meet the following requirements:

(A) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(B) The audit must examine the agency's financial management of its FFEL program activities.

(C) The audit must be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO) Government Auditing Standards. Procedures for audits are contained in an audit guide developed by, and available from, the Office of the Inspector General of the Department.

(D) The audit must be conducted annually and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period that includes July 23, 1992, unless the agency is currently submitting audits on a biennial basis, and the second year of its biennial cycle starts on or before July 23, 1992. Under these circumstances, the agency shall submit a biennial audit that includes July 23, 1992 and submit its next audit as an annual audit.

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note and subject to any limitation on the amount of those costs in that note, the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. Except as provided in Secs. 682.401(b)(27) and 682.405(b)(1)(iv), the amount charged a borrower must equal the lesser of--

(i) The amount the same borrower would be charged for the cost of collection under the formula in 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) *Interest charged by guaranty agencies.* The guaranty agency shall charge the borrower interest on the amount owed by the borrower after the capitalization required under paragraph (b)(4) of this section has occurred at a rate that is the greater of--

(i) The rate established by the terms of the borrower's original promissory note;

(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) *Capitalization of unpaid interest.* The guaranty agency shall capitalize any unpaid interest due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Credit bureau reports.* (i) After the completion of the procedures in paragraph (b)(5)(ii) of this section, the guaranty agency shall, after it has paid a default claim, report promptly, but not less than sixty days after completion of the procedures in paragraph (b)(6)(iii) of this section, and on a regular basis, to all national credit bureaus--

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;

(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(ii) The guaranty agency, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, shall provide the borrower with--

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in 34 CFR 30.20-30.33 (administrative offset) satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request submitted by a borrower, after the deadlines established under agency rules, for access to records, an administrative review, or for an opportunity to enter into a repayment agreement, the agency shall provide the requested relief but may continue reporting the debt to credit bureaus until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is--

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must--

(A) Advise the borrower that the agency has paid a default claim filed by the lender and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately begin repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules to request access to the agency's records on the loan, to request an administrative review of the legal enforceability or past-due status of the loan, and to reach an agreement on repayment terms satisfactory to the agency to prevent the agency from reporting the loan as defaulted to credit bureaus and provide deadlines and method for requesting this relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against federal or state income tax refunds or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, for an administrative review, or for agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; and

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for the filing of a lawsuit against the borrower by the Federal Government.

(6) *Collection efforts on defaulted loans.* (i) A guaranty agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii) through (xii) of this section on a loan on which it pays a default claim filed by a lender, and shall attempt an annual IRS offset on each eligible loan, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii) through (vi) of this section. If, after initiating wage garnishment procedures, the agency terminates those procedures for a particular borrower, the agency shall, within 30 days, commence collection efforts at least as forceful as those described in paragraphs (b)(6)(iii) through (xii) of this section. The agency's collection efforts shall begin with the same collection activities as those that immediately preceded the initiation of garnishment procedures, or, if no collection activities had been performed, the agency shall begin with the activities described in paragraph (b)(6)(iii) of this section, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii) through (vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6)(iii)-(xii) and (b)(7) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan or on multiple loans for a borrower. These periods of time do not include any periods during which the agency is engaged in activities related to administrative wage garnishment, or is receiving a payment through garnishment at least once every 60 days during the period specified in paragraph (5)(iv)(B) of this section, or during which the agency is engaged in an administrative review of the borrower's indebtedness on the loan pursuant to a request by the borrower under paragraph (b)(5)(iv) of this section. References to the "borrower" in this paragraph and paragraph (b)(7) of this section include all endorsers on a loan.

(B) The agency may institute a civil suit against the borrower earlier than the first day of the period described in paragraph (b)(6)(vii) of this section. Upon instituting suit, the agency is not required thereafter to follow the procedures in paragraphs (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraphs (b)(6)(iii) or (iv) of this section, or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii) of this section, the agency is not required to follow the specific collection efforts described in paragraphs (b)(6)(iii)-(vii) of this section if the written notice described in paragraph (b)(5)(ii) of this section has been sent, but shall diligently attempt to collect the loan for 60-days following receipt of the payment or receipt of confirmation of the borrower's address, as applicable. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(6)(iv)-(ix) of this section, treating the first day

414

after the end of the 60-day period as the first day of the period described in paragraph (b)(6)(iv) of this section.

(iii) One-45 days: During this period, the agency shall--

(A) Send to the borrower the written notice described in paragraph (b)(5)(ii) of this section, and a written notice stating that the agency either will initiate procedures to garnish the borrower's wages, or institute a civil suit to compel repayment of the amount that the borrower owes plus related collection costs; and

(B) Diligently attempt to contact the borrower by telephone, as defined in Sec. 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand payment of the loan.

(iv) 46-180 days: During this period the agency shall--

(A) Engage in at least two diligent attempts to contact the borrower by telephone, as defined in Sec. 682.411(1) (with references to "the lender" understood to mean "the agency") to demand repayment of the loan; and

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged. The final notice also must indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the initiation of procedures to garnish the borrower's wages, or to offset the borrower's state and federal income tax refunds, or instituting a civil suit to compel repayment of the amount that the borrower owes plus related collection costs.

(v) At no point during the periods described in paragraphs (b)(6)(iii) and (iv) of this section may the agency permit the occurrence of a gap in collection activity of more than 60 days.

(vi) For purposes of paragraph (b)(6)(v) of this section, the term gap in collection activity means, with respect to a loan, any period--

(A) Beginning on the date that is the day after--

(1) The date the agency paid a default claim to the lender thereon;

(2) The day on which the agency receives the correct address for a borrower who has made no payment in the preceding 60 days; or

(3) The day on which the agency completes a collection activity as defined in Sec. 682.411(k)(1) through (3) (with references to "the lender" therein understood to mean "the agency"); and

(B) Ending on the date of the earliest of--

(1) The day on which the agency receives the first subsequent payment;

(2) The day on which the agency begins the first subsequent collection activity as defined in (1) through (3) (with references to the "lender" understood to mean "the agency"); or

(3) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) After 181 days:

(A) Except as provided in paragraph (b)(6)(vii)(B) of this section, during this period but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall initiate proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower, and shall initiate administrative wage garnishment proceedings against the borrower by the 225th day. If the agency determines that the borrower has insufficient income to satisfy the debt through wage garnishment, but has assets from which the debt can be satisfied, the agency shall assign the loan to the Department. The agency must not file suit to collect a loan from a borrower unless directed to do so by the Secretary.

(B) The agency need not file suit if the agency determines and documents in the borrower's file that--

(1) The cost of litigation would exceed the likely recovery if litigation was begun; or

(2) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof.

(viii)(A) If as a result of a determination made pursuant to paragraph (B)(6)(vii)(D)(2) of this section the agency does not institute a civil suit against the borrower for repayment of the loan, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy at least a substantial portion of the debt and that the cost of litigation would not exceed the amount likely to be obtained if litigation were begun, then, if subsequent collection efforts are not successful, the agency, no later than 60 days after the determination, shall institute a civil suit against the borrower for repayment of the loan.

(C) The guaranty agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall attempt diligently to enforce a judgment obtained against a borrower on a loan and shall ensure that the judgment is renewed as permitted by applicable law. If, despite diligent attempts, the agency cannot recover the full amount of the judgment because the borrower lacks sufficient assets or income attachable under applicable law to fully satisfy the judgment, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired sufficient attachable assets or income to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired sufficient attachable assets or income to satisfy the remainder of the judgment and that the cost of enforcing the judgment would not exceed the likely recovery, the agency, not later than 60 days thereafter, shall notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full of all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in paragraph (b)(6)(ix)(B) of this section, the agency, within 30 days thereafter, shall proceed to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(6)(viii) and (ix) of this section only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6)(vii)-(x) of this section, the agency shall file a civil suit against the borrower for repayment of the loan, and shall enforce a judgment obtained thereon unless the agency--

(A) Determines and documents in the borrower's file that the cost of litigation would exceed the judgment amount likely to be obtained if litigation were begun, or, in the case of a proceeding to enforce a judgment, that the cost of such a proceeding would exceed the likely recovery from the debtor; or

(B) Previously has discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6)(x) of this section.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(B) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall attempt diligently to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the IRS, credit bureaus, and state motor vehicle departments. A guaranty agency shall use any information provided by a school about a borrower's location in conducting skip-tracing activities.

(7) *Alternative collection procedures for defaulted loans.* (i) A guaranty agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6)(iii)-(vi) of this section. The regulations in paragraphs (b)(6)(ii)(A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7)(iii)-(v) of this section.

(ii) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(7)(iii)-(vi) of this section but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(7)(iii)-(vi) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(7)(iv) of this section.

(iii) 1-30 days: During this period the agency shall send to the borrower the written notice described in paragraph (b)(5)(ii) of this section.

(iv)(A) 31-180 days: During this period the guaranty agency shall attempt diligently to collect the loan using such collection tools and activities as it deems appropriate, provided, however, that the agency must make at least one diligent effort to contact the borrower by telephone, as defined in Sec. 682.411(l) (with references to "the lender" understood to mean "the agency"), and send at least two forceful collection letters to the borrower.

(B) By the end of this period, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

(C) The collection contractor to whom the agency refers a loan under paragraph (b)(7)(iv)(B) of this section must--

(*1*) Be compensated for its services on all FFEL loans referred by the agency solely on a contingency fee basis;

(*2*) Be one of at least two collection contractors simultaneously providing collection services to the agency on FFEL loans under a competitive system that the agency has established and that includes the periodic assessment by the agency of the performance of the competing contractors and periodic adjustments in the volume of loans referred by the agency to each competing contractor based on those assessments; and

(3) Not receive referral of more than 70 percent of the agency's referred loans in any calendar year.

(v) Notwithstanding the deadline for instituting a civil suit set forth in paragraph (b)(6)(vii) of this section, an agency that uses the procedures in paragraphs (b)(7)(i)-(iv) of this section shall institute a civil suit required by that paragraph prior to the earliest of--

(A) The 90th day following the collection contractor's return of the loan to the agency; or

(B) The 365th day following the later of the agency's referral of the loan to the collection contractor, or the contractor's receipt of a payment on the loan.

(8) *Special conditions for agency payment of a claim.* (i) A guaranty agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in Sec. 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(8)(i) of this section, the guaranty agency shall--

(A) Perform the loan servicing functions required of a lender under Sec. 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under Sec. 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender or becomes delinquent while the agency holds the loan,exercise due diligence in accordance with Sec. 682.411 in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6)(i) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(9) *Preemption of State law.* The provisions of paragraphs (b)(2), (5), (6), and (7) of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements of these provisions.

(10) *Administrative Garnishment.* (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it shall do so in accordance with the following procedures:

(A) The employer shall deduct and pay to the agency from a borrower's wages an amount that does not exceed the lesser of 10 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term "disposable pay" means that part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

(B) At least 30 days before the initiation of garnishment proceedings, the guaranty agency shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights.

(C) The guaranty agency shall offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency shall offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

(E) The guaranty agency shall offer the borrower an opportunity for a hearing in accordance with paragraph (b)(10)(i)(J) of this section concerning the existence or the amount of the debt and, in the case of a borrower whose proposed repayment schedule under the garnishment order is established other than by a written agreement under paragraph (b)(10)(i)(D) of this section, the terms of the repayment schedule.

(F) The guaranty agency shall sue any employer for any amount that the employer, after receipt of the garnishment notice provided by the agency under paragraph (b)(10)(i)(H) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(G) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.

(H) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

(I) The notice given to the employer under paragraph (b)(10)(i)(H) of this section must contain only the information as may be necessary for the employer to comply with the withholding order.

(J) The guaranty agency shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. The time and location of the hearing shall be established by the agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. All telephonic charges must be the responsibility of the guaranty agency.

(K) If the borrower's written request is received by the guaranty agency on or before the 15th day following the borrower's receipt of the notice described in paragraph (b)(10)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(10)(i)(B) of this section 5 days after it was mailed by the agency. The guaranty agency shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

(L) If the borrower's written request is received by the guaranty agency after the 15th day following the borrower's receipt of the notice described in paragraph (b)(10)(i)(B) of this section, the guaranty agency shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(10)(i)(B) of this section 5 days after it was mailed by the agency.

(M) The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge, not under the supervision or control of the head of the guaranty agency.

(N) The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request.

(O) As specified in section 488A(a)(8) of the HEA, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(ii) References to "the borrower" in this paragraph include all endorsers on a loan.

(11) *Conflicts of interest.* (i) A guaranty agency shall maintain and enforce written standards of conduct governing the performance of its employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements. The standards of conduct must, at a minimum, require disclosure of financial or other interests and must mandate disinterested decision-making. The standards must provide for appropriate disciplinary actions to be applied for violations of the standards by employees, officers, directors, trustees, or agents of the guaranty agency, and must include provisions to--

(A) Prohibit any employee, officer, director, trustee, or agent from participating in the selection, award, or decision-making related to the administration of a contract or agreement supported by the reserve fund described in paragraph (a) of this section, if that participation would create a conflict of interest. Such a conflict would arise if the employee, officer, director, trustee, or agent, or any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of those parties has a financial or ownership interest in the organization selected for an award or would benefit from the decision made in the administration of the contract or agreement. The prohibitions described in this paragraph do not apply to employees of a State agency covered by codes of conduct established under State law;

(B) Ensure sufficient separation of responsibility and authority between its lender claims processing as a guaranty agency and its lending or loan servicing activities, or both, within the guaranty agency or between that agency and one or more affiliates, including independence in direct reporting requirements and such management and systems controls as may be necessary to demonstrate, in the independent audit required under Sec. 682.410(b)(1), that claims filed by another arm of the guaranty agency or by an affiliate of that agency receive no more favorable treatment than that accorded the claims filed by a lender or servicer that is not an affiliate or part of the guaranty agency; and

(C) Prohibit the employees, officers, directors, trustees, and agents of the guaranty agency, his or her partner, or any member of his or her immediate family, from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to agreements, except that nominal and unsolicited gratuities, favors, or items may be accepted.

(ii) *Guaranty agency restructuring.* If the Secretary determines that action is necessary to protect the Federal fiscal interest because of an agency's failure to meet the requirements of Sec. 682.410(b)(11)(i), the Secretary may require the agency to comply with any additional measures that the Secretary believes are appropriate, including the total divestiture of the agency's non-FFEL functions and the agency's interests in any affiliated organization.

(c) *Enforcement requirements.* A guaranty agency shall take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State, and guaranty agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least--

(i)(A) Each participating lender whose dollar volume of FFEL loans made or held by the lender and guaranteed by the agency in the preceding year--

(1) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency;

(2) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or

(3) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D) or (J) of the Act that is located in any State in which the agency is the principal guarantor as defined in Sec. 682.800(d), and, at the option of each guaranty agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guaranty agency is the principal guaranty agency, that has a cohort default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under 668.15 to take specific default reduction measures or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1)(A)-(C) of this section if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions, including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any case in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation, any correspondence, and any other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) Undertaking or arranging with State or local law enforcement agencies for the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to nationally recognized accrediting agencies and associations for investigation information received by the guaranty agency that may affect the retention or renewal of the license or accreditation of a program participant.

(7) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof to the Secretary.

(8) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(9) Promptly notifying the Secretary of--

(i) Any action it takes affecting the FFEL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the FFEL program eligibility of a participating lender or school taken by a nationally recognized accrediting agency, association, or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of FFEL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(10) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(11) Taking prompt action to protect the rights of borrowers and the Federal fiscal interest respecting loans that the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing problems that threaten the solvency of the school or holder, including--

(i) Conducting on-site program reviews;

(ii) Providing training and technical assistance, if appropriate;

(iii) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency and any refunds due to borrowers on FFEL loans that it has guaranteed when the agency learns that a school has filed a bankruptcy petition;

(iv) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(v) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1087, 1091a, and 1099)

(Approved by the Office of Management and Budget under Control Number 1840-0538)

Note: (b) amended April 29, 1994, effective June 13, 1994. (a)(1) and (a)(2) amended and (a)(6), (a)(7), and (a)(8) added June 28, 1994, effective July 1, 1995. OMB control number amended September 7, 1994, effective September 7, 1994. (a) and OMB control number amended November 25, 1994, effective July 1, 1995. (b)(2), (b)(6)(vii) introductory text, and (b)(6)(vii)(A) revised November 27, 1996, effective July 1, 1997. (a)(2) introductory text, (a)(2)(ii), and (a)(2)(x) revised and (a)(11)(iii) and (b)(11) added November 27, 1996, effective July 1, 1997.

Sec. 682.411 Due diligence by lenders in the collection of guaranty agency loans.

(a) *General.* In the event of delinquency on a FFEL programs loan, the lender shall engage in at least the collection efforts described in paragraphs (c)-(m) of this section, except that in the case of a loan made to a borrower who is incarcerated or to a borrower residing outside a State, Mexico, or Canada, the lender may send a forceful collection letter in lieu of each telephone effort required by this section.

(b) *Delinquency.* (1) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment which is not later made. The due date of the first payment is established by the lender but must occur no later than 45 days following the end of the grace period, or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns, except as provided in Sec. 682.209(a)(3)(ii)(E). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment which is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(2) At no point during the periods specified in paragraphs (c) and (d) of this section may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

(c) *1-15 days delinquent*: Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, a lender/servicer contact and telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficult in making a scheduled repayment.

(d) *16-180 days delinquent (16-240 days delinquent for a loan repayable in installments less frequent than monthly):* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by phone must occur before, and another one must occur after, the 90th day of delinquency. The notice or collection letter sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment and loan consolidation and other available options to avoid default.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all

national credit bureaus, and that the agency may institute proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower or to garnish the borrower's wages, or assign the loan to the federal government for litigation against the borrower.

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only--

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone if the loan is 91-120 days delinquent (121-180 days delinquent for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment of forbearance.

(4) A lender need not attempt to contact by telephone any borrower--

(i) Who is incarcerated;

(ii) Who is residing outside of a State, Mexico or Canada;

(iii) Whose telephone number is unknown;

(iv) Who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of--

(A) A payment on the loan;

(B) A correct address for the borrower;

(C) A dishonored check received from the drawee as a payment on the loan; or

(D) The expiration of an authorized deferment or forbearance.

(e) *Final demand.* On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender shall allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(f) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (l)(1) of this section, the lender is excused from any further efforts to contact the borrower by telephone during the delinquency period in which the unsuccessful effort was made, unless the borrower's number is obtained before the 120th day of delinquency (the 150th day for loans payable repayable in installments less frequent than monthly).

(g) *Skip-tracing.* (1) Unless the letter specified under paragraph (e) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender shall begin to diligently attempt to locate the borrower through the use of normal commercial skip-tracing techniques. These efforts must include, but are not limited to, making a diligent effort to contact each endorser, relative, reference, and individual and entity identified in the borrower's loan file. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator identified on the loan application. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in paragraphs (c)-(e) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in paragraph (g)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c)-(e) and (k)(1) through (k)(3) and (k)(5) of this section unless it receives communication indicating the borrower's address before the 151st day of delinquency (the 211th day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraphs (l)(1)(i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative, individual or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(h) *Preclaims assistance.* The lender shall request preclaims assistance from the agency that guaranteed the loan within 10 days before or after the date established by the agency that assistance is first available from the agency.

(i) *Gap in collection activity*. For purposes of this section, the term "gap in collection activity" means, with respect to a loan, any period--

(1) Beginning on the date that is the day after--

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of--

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity;

(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or

(iv) Default.

(j) *Transfer*. For purposes of this section, the term "transfer" with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(k) *Collection activity*. For purposes of this section, the term "collection activity" with respect to a loan means--

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraphs (c), (d), or (e) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraph (g)(1) of this section, to locate a borrower whose correct address or telephone number is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(l) *"Diligent effort" for telephone contact*. (1) For purposes of this section, the term "diligent effort" with respect to telephone contact means--

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and a diligent effort to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (l)(1)(iii) of this section, the lender is excused thereafter from attempting to contact the borrower by telephone unless it receives a communication indicating the borrower's current telephone number before the 120th day of delinquency (the 150th day for loans repayable in installments less frequent than monthly).

(3) The activities specified by paragraphs (l)(1)(i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative or individual identified on the borrower's most recent loan application.

(m) *Due diligence for endorsers.* (1) During the delinquency period the lender shall--

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 151st day of delinquency, (the 211th day for loans payable in less frequent installments than monthly) the lender shall send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender shall allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan current before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (m)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of normal commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(n) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1087)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (d) amended April 29, 1994, effective June 13, 1994. (a), (b), (d), (f), (g), (i), (k), and (l) amended May 17, 1994, effective July 1, 1994. OMB control number amended September 7, 1994, effective September 7, 1994. (c), (d) introductory text, (d)(1), and (d)(2) revised November 27, 1996, effective July 1, 1997.

Sec. 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of Sec. 682.411(e) when it learns and can substantiate that the borrower or the student on whose behalf a parent has borrowed, without the lender or school's knowledge at the time the loan was made, provided false or erroneous information or took actions that caused the student or borrower--

(1) To be ineligible for all or a portion of a loan made under this part;

(2) To receive a Stafford loan subject to payment of Federal interest benefits as provided under Sec. 682.301 for which he or she was ineligible; or

(3) To receive loan proceeds for a period of enrollment from which he or she has withdrawn or been expelled prior to the first day of classes or during which he or she failed to attend school and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that within 30 days from the date the letter is mailed the borrower repay in full any principal amount for which the borrower is ineligible and any accrued interest, including interest and all special allowance paid by the Secretary.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall--

(1) On its next quarterly interest billing submitted under Sec. 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and--

(1) With its next quarterly interest billing submitted under Sec. 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in Sec. 682.406(a)(5), file a default claim thereon with the guaranty agency for the entire unpaid balance of principal and accrued interest.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (c) amended December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996.

Sec. 682.413 Remedial actions.

(a)(1) The Secretary requires a lender and its third-party servicer administering any aspect of the FFEL programs under a contract with the lender to repay interest benefits and special allowance or other compensation received on a loan guaranteed by a guaranty agency, pursuant to paragraph (a)(2) of this section--

(i) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to comply with any of the requirements set forth in Sec. 682.406(a)(1)-(a)(6), (a)(9), and (a)(12);

(ii) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(iii) For any period in which the lender or servicer, with respect to the loan, violates the requirements of subpart C of this part; and

(iv) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under Sec. 682.302(d).

(2) For purposes of this section, a lender and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits and special allowance paid as a result of a violation of applicable requirements by the servicer in administering the lender's FFEL programs.

(3) For purposes of paragraph (a)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (a)(2) of this section only if--

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii) (A) The lender has not repaid in full the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability;

(B) The lender has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the lender receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the lender by offsetting the lender's bill to the Secretary for interest benefits or special allowance, if--

(1) The bill is submitted after the 30 day period specified in paragraph (a)(3)(ii)(A) of this section has passed; and

(2) The lender has not paid, or made satisfactory arrangements to pay, the liability.

(b)(1) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency fails to meet the requirements of Sec. 682.406(a).

(2) The Secretary may require a guaranty agency to repay reinsurance payments received on a loan or to assign FFEL loans to the Department if the agency fails to meet the requirements of Sec. 682.410.

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency or third-party servicer administering any aspect of the FFEL programs under a contract with the guaranty agency, that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(i) Require the agency to return payments made by the Secretary to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(iv) Suspend or terminate agreements with the agency.

(v) Impose a fine on the agency or servicer. For purposes of assessing a fine on a third-party servicer, a repeated mechanical systemic unintentional error shall be counted as one violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system.

(vi) Require repayment from the agency and servicer pursuant to paragraph (c)(2) of this section, of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate Sec. 682.206(f)(1).

(vii) Require repayment from the agency or servicer, pursuant to paragraph (c)(2) of this section, of any related payments that the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or a violation of an applicable Federal requirement.

(2) For purposes of this section, a guaranty agency and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits, special allowance, reinsurance paid, or other compensation on Consolidation loan amounts attributed to Consolidation loans that violate Sec. 682.206(f)(1) as a result of a violation by the servicer administering any aspect of the FFEL programs under a contract with that guaranty agency.

(3) For purposes of paragraph (c)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (c)(2) of this section only if-

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii)(A) The guaranty agency has not repaid in full the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability;

(B) The guaranty agency has not made other satisfactory arrangements to pay the amount of the liability within 30 days from the date the guaranty agency receives notice from the Secretary of the liability; or

(C) The Secretary is unable to collect the liability from the guaranty agency by offsetting the guaranty agency's first reinsurance claim to the Secretary, if-

(1) The claim is submitted after the 30-day period specified in paragraph (c)(3)(ii)(A) of this section has passed; and

(2) The guaranty agency has not paid, or made satisfactory arrangements to pay, the liability.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender, guaranty agency, or third-party servicer. References to "the institution" in those regulations shall be understood to mean the lender, guaranty agency, or third-party servicer, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or lender.

(e)(1) The Secretary's decision to require repayment of funds, withhold funds, or to limit, suspend, or terminate a lender, agency, or third-party servicer from participation in the FFEL programs does not become final until the Secretary provides the lender, agency, or servicer with written notice of the intended action and an opportunity to be heard thereon, at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender, agency, or servicer requests an opportunity to be heard.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in Sec. 682.704 applicable to emergency actions against lenders in taking an emergency action against a guaranty agency.

(3) The Secretary follows the procedures in 34 CFR 30.20-30.32 in collecting a debt by offset against payments otherwise due a guaranty agency or lender.

(f) Notwithstanding paragraphs (a)-(e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if in the Secretary's judgment the best interests of the United States so require. The Secretary's waiver policy for violations of Sec. 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guaranty agency under this section is conclusive and binding on the lender or agency.

Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1, 1097)

Note: (a), (b), (c), and (d) amended April 29, 1994, effective July 1, 1994. (e)(1) amended November 29, 1994, effective July 1, 1995. (b) redesignated (b)(1) and (b)(2) added November 27, 1996, effective July 1, 1997.

Sec. 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

(ii) The agency shall maintain--

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for preclaims and supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. However, in particular cases the Secretary may require the retention of records beyond this minimum period. For the purpose of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death (or student's death in the case of a PLUS loan), the borrower's permanent and total disability or bankruptcy, the discharge of the borrower's loan obligation because of attendance at a closed school, or because the student's eligibility to borrow had been falsely certified by the school.

(3) A guaranty agency shall retain a copy of the audit report required under Sec. 682.410(b) for not less than five years after the report is issued.

(4)(i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep--

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(iv) A lender shall retain a copy of the audit report required under Sec. 682.305(c) for not less than five years after the report is issued.

(5)(i) A guaranty agency or lender may store the records specified in paragraphs (a)(4)(ii)(C)-(K) of this section in accordance with 34 CFR 668.24(d)(3) (i) through (iv).

(ii) A lender or guaranty agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency shall either return the original note to the borrower or notify the borrower under an alternate procedure that is acceptable under State law that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guaranty agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) *Reports.* A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on--

(i) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with Sec. 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) *Inspection requirements.* (1) For purposes of examination of records, references to an institution in 34 CFR 668.24(f) (1) through (3) shall mean a guaranty agency or its agent.

(2) A guaranty agency shall require in its agreement with a lender or in its published rules or procedures that the lender or its agent give the Secretary or the Secretary's designee and the guaranty agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to Sec. 682.401(b) (21) and (22), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: (a)(1)(i) amended April 29, 1994, effective July 1, 1994. (a)(2) amended April 29, 1994, effective June 13, 1994. (a)(3)(iii) amended and (a)(3)(iv) added June 28, 1994, effective July 1, 1995. OMB control number amended July 7, 1994, effective July 7, 1994. (a) and (c) amended November 27, 1996, effective July 1, 1997.

Sec. 682.415 Special insurance and reinsurance rules.

(a)(1) A lender or lender servicer (as an agent for an eligible lender) designated for exceptional performance under paragraph (b) of this section shall receive 100 percent reimbursement on all claims submitted for insurance during the 12-month period following the date the lender or lender servicer and appropriate guaranty agencies receive notification of the designation of the eligible lender or lender servicer under paragraph (b) of this section. A guaranty agency or a guaranty agency servicer (as an agent for a guaranty agency) designated for exceptional performance under paragraph (c) of this section shall receive the applicable reinsurance rate under section 428(c)(1) of the Act on all claims submitted for payments by the guaranty agency or guaranty agency servicer during the 12-month period following the date the guaranty agency receives notification of its designation, or its servicer's designation, under paragraph (c) of this section. A notice of designation for exceptional performance under this section is deemed to have been received by the lender, servicer, or guaranty agency no later than 3 days after the date the notice is mailed, unless the lender, servicer, or guaranty agency is able to prove otherwise.

(2) To receive a designation for exceptional performance under paragraph (a)(1) of this section, a lender, servicer, and guaranty agency must submit to the Secretary--

(i) A written request for designation for exceptional performance that includes--

(A) The applicant's name and address;

(B) A contact person;

(C) Its ED identification number, if applicable;

(D) The name and address of applicable guarantors; and

(E) A copy of an annual financial audit performed in accordance with the Audit Guide developed by the U.S. Department of Education, Office of Inspector General, or one of the following as appropriate:

(1) A lender may submit a copy of an annual audit required under Sec. Sec. 682.305(c), if the audit period ends no more than 90 days prior to the date the lender submits its request for designation.

(2) A servicer may submit a copy of the annual financial audit, as defined, completed and submitted under 34 CFR 682.416(e), if the audit period ends no more than 90 days prior to the date the servicer submits its request for designation.

(3) A guaranty agency may submit a copy of the annual audit required under section 428(b)(2)(D) of the Higher Education Act of 1965, as amended, if the audit period ends no more than 90 days prior to the date the guaranty agency submits its request for designation;

(ii) If the applicant is a servicer, a statement signed by the owner or chief executive officer of the applicant certifying that the applicant meets the definition of a servicer contained in paragraph (d)(3) of this section; and

(iii)(A) A compliance audit of its loan portfolio, conducted by a qualified independent organization meeting the criteria in paragraph (b)(9) of this section, that yields a compliance performance rating of 97 percent or higher of all due diligence requirements applicable to each loan, on average, with respect to the collection of delinquent or defaulted loans and satisfying the requirements in paragraph (b)(1)(iv) of this section or, if applicable, paragraph (c)(2)(i) of this section. The audit period may end no more than 90 days prior to the date the lender, servicer or guaranty agency submits its request for designation.

(B) To satisfy the requirement of paragraph (a)(2)(iii)(A) of this section, a servicer may submit its annual compliance audit under 34 CFR 682.416(e), if the servicer includes in its report a measure of its compliance performance rating required under paragraph (a)(2)(iii)(A) of this section, if this audit is performed in accordance with an audit guide developed by the U.S. Department of Education, Office of Inspector General.

(3) The cost of audits for determining eligibility and continued compliance under this section is the responsibility of the lender, servicer, or guaranty agency.

(4) A lender or servicer shall also submit the information in paragraph (a)(2)(i), (ii), or (iii) of this section to each appropriate guaranty agency.

(5) A lender may be designated for exceptional performance for loans that it services itself. A lender servicer may be designated for exceptional performance only for all loans it services.

(6)(i) To prevent a lapse of a lender's, servicer's, or guaranty agency's exceptional performance status after the end of the 12-month period, the lender, servicer, or guaranty agency shall submit updated information required under paragraph (a)(2) of this section to the Secretary no later than 90 days after the end of the annual audit period.

(ii) Upon the Secretary's determination that the lender, servicer, or guaranty agency maintained at least a 97 percent compliance performance rate and satisfies the other requirements for designation, the Secretary notifies the lender, servicer, or guaranty agency that its redesignation for exceptional performance begins on the date following the last day of the previous 12-month period for which it received designation for exceptional performance. However, a lender's, servicer's, or guaranty agency's designation for exceptional performance continues until it receives notification from the Secretary that its request for redesignation is approved, or that its designation is revoked, under the provisions of paragraph (b)(8)(iii) of this section.

(iii) The Secretary notifies the lender or lender servicer and the appropriate guaranty agency within 60 days after the date the Secretary receives the information, listed in paragraph (a)(2) of this section, from the eligible lender or lender servicer, that the lender's or lender servicer's reapplication for designation for exceptional performance has been approved or denied. A notice under paragraph (a)(6) of this section is determined to have been received by the lender, servicer, or guaranty agency no later than 3 days after the notice is mailed, unless the lender, servicer, or guaranty agency is able to prove otherwise.

(b) *Determination of eligibility.* (1) The Secretary determines whether to designate a lender or lender servicer for exceptional performance based upon--

(i) The annual compliance audit of collection activities required for FFEL Program loans under Sec. 682.411(c) through (h), and (m), if applicable, serviced during the audit period;

(ii) Information from any guaranty agency regarding an eligible lender or lender servicer desiring designation, including, but not limited to, any information suggesting that the lender's or lender servicer's request for designation should not be approved;

(iii) Any other information in the possession of the Secretary, or submitted to the Secretary by any other agency or office of the Federal Government; and

(iv) Evidence indicating that the lender or lender servicer has complied with the requirements for converting FFEL Program loans to repayment under Sec. 682.209(a), and the timely filing requirements under Secs. 682.402(e)(2) and 682.406(a)(5), in accordance with the audit guide as published by the U.S. Department of Education, Office of Inspector General. The audit submitted under paragraph (b)(1)(i) of this section may satisfy this requirement, if a separate sample of loans is used.

(2) The Secretary informs the eligible lender or lender servicer, and the appropriate guaranty agency, that the lender's or lender servicer's request for designation as an exceptional lender or lender servicer has been approved, unless the results of the audit are persuasively rebutted by information under paragraphs (b)(1)(ii) or (iii) of this section. If the request for designation is not approved, the Secretary informs the lender or lender servicer and the appropriate guaranty agency or agencies of the reason the application is not approved.

(3) In calculating a lender's or lender servicer's compliance rating, as referenced in paragraph (a)(2)(ii) of this section, the universe for the audit must include all loans in the lender's or lender servicer's FFEL Program portfolio that are serviced during the audit period performed under the Department's regulations in Secs. 682.411, 682.209(a), 682.402(e)(2), and 682.406(a)(5). The calculation may consider only due diligence activities applicable to the audit period. The numerator must include the total number of collection activities successfully completed, in accordance with program regulations, that are serviced during the audit period. The denominator must include the total number of collection activities required to be performed, in compliance with program regulations, that are serviced during the audit period. Using statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General, a random sample of loans must be selected and evaluated.

(4) The Secretary notifies the lender or lender servicer and the appropriate guaranty agency within 60 days after the date the Secretary receives the information, listed in paragraph (a)(2) of this section, from the eligible lender or lender servicer, that the lender's or lender servicer's application for designation for exceptional performance has been approved or denied.

(5)(i) Except as provided under paragraph (b)(8) of this section, a guaranty agency may not refuse, solely on the basis of a violation of repayment conversion, due diligence requirements, or timely filing requirements, to pay an eligible lender or lender servicer, designated for exceptional performance, 100 percent of the unpaid principal and interest of all loans for which eligible claims are submitted for insurance payment by that eligible lender or lender servicer. The designation of a lender or lender servicer for exceptional performance applies to loans that have been serviced by the lender or lender servicer for the last 180 days prior to a borrower's default or earlier in the case of death, disability, or bankruptcy.

(ii) A guaranty agency or the Secretary may require the lender or lender servicer to repurchase a loan if the agency determines the loan should not have been submitted as a claim. A guaranty agency may not require repurchase of a loan based solely on the lender's violation of the requirement relating to repayment conversion, due diligence, or timely filing. The guaranty agency must pay claims to a lender or lender servicer designated for exceptional performance in accordance with this paragraph for the one-year period following the date the guaranty agency receives notification of the lender's or lender servicer's designation under paragraph (b)(2) of this section, unless the Secretary notifies the guaranty agency that the lender's or lender servicer's designation for exceptional performance has been revoked.

(6)(i) To maintain its designation for exceptional performance, the lender or lender servicer must have a quarterly compliance audit of the due diligence in collection activities required for FFEL Program loans under Sec. 682.411(c)-(h), and (m), if applicable, and for converting FFEL Program loans to repayment under Sec. 682.209(a) and timely filing requirements under Secs. 682.402(e)(2) and 682.406(a)(5) conducted by a qualified independent organization meeting the criteria in paragraph (b)(9) of this section that results in a compliance rating for the quarter of not less than 97 percent. The audit must indicate a compliance performance rating of not less than 97 percent for two consecutive months or 90 percent for any month. The quarterly audit may not include any period covered by the annual financial and compliance audit under paragraph (a)(2) of this section. The results of the quarterly compliance audit must be submitted to the Secretary and to the appropriate guaranty agencies within 90 days following the end of each quarter.

(ii) If a lender or lender servicer has been designated for exceptional performance for at least 15 months, a lender or lender servicer may petition the Secretary for permission to have its internal auditors perform the subsequent quarterly compliance audits required by paragraph (b)(6)(i) of this section. If the Secretary approves the request, the lender's or lender servicer's annual audit must assess the reliability of the procedures used by the lender's or lender servicer's internal auditor in performing the quarterly audits.

(iii) The lender or lender servicer shall perform three quarterly audits and one annual audit that includes a representative sample of fourth quarter collection activities to satisfy the requirements of this paragraph.

(7)(i) Insurance payments made on eligible claims submitted by a lender or lender servicer designated for exceptional performance are not subject to additional review of repayment conversion, due diligence, and timely filing requirements, or to required repurchase by the lender or lender servicer, unless the Secretary determines that the eligible lender or lender servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance. Notwithstanding the payment requirements in this paragraph, nothing prohibits the guaranty agency or the Secretary from reviewing the lender's or lender servicer's activities in regard to the loans paid under this paragraph as part of program oversight responsibilities, or for requiring the lender to repurchase a loan if the agency determines the loan should not have been submitted as a claim. The lender shall file, and the guaranty agency shall maintain, the documentation the guaranty agency normally requires its lenders to file with respect to the collection history of each loan.

(ii) A lender or lender servicer designated under this section that fails to service loans or otherwise comply with applicable program regulations is considered in violation of 31 U.S.C. 3729.

(8)(i) The Secretary revokes the designation of a lender or lender servicer for exceptional performance if--

(A) The quarterly compliance audit required under paragraph (b)(6) of this section is submitted to the Secretary and indicates that the lender or lender servicer failed to maintain not less than 97 percent compliance with due diligence standards for the quarter, or not less than 97 percent compliance for 2 consecutive months, or 90 percent for any month; or

(B) Any quarterly audit required in paragraph (b)(6) of this section is not received by the Secretary within 90 days following the end of each quarter.

(ii) The Secretary may revoke the designation of an exceptional lender or lender servicer if--

(A) The Secretary determines the eligible lender or lender servicer failed to maintain an overall level of regulatory compliance consistent with the audit submitted by the lender or lender servicer;

(B) The Secretary has reason to believe the lender or lender servicer may have engaged in fraud in securing its designation for exceptional performance; or

(C) The lender or lender servicer fails to service loans in accordance with program regulations. For purposes of this paragraph, a lender or lender servicer fails to service loans in accordance with program regulations if the Secretary determines that the lender or lender servicer has committed serious and material violations of the regulations.

(iii) The date on which the event or condition occurred is the effective date of the revocation, except for revocation under paragraph (a)(6) of this section, which is effective at the close of the 12-month period for which the lender or lender servicer received designation for exceptional performance.

(9) Public accountants, public accounting firms, and external government audit organizations that meet the qualification and independence standards contained in Government Auditing Standards published by the Comptroller General of the United States are acceptable entities to perform the audits required under paragraphs (a)(3)(iii)(A) and (b)(6) of this section.

(c)(1)(i) Except as provided under paragraph (c)(8) of this section, the Secretary pays the applicable reinsurance rate under section 428(b)(1)(G) of the Act on all claims submitted by a guaranty agency or guaranty agency servicer that has been designated for exceptional performance.

(ii) A guaranty agency may be designated for exceptional performance for loans that it services itself.

(iii) A guaranty agency servicer may be designated for exceptional performance for loans it services.

(iv) A guaranty agency or guaranty agency servicer is designated for exceptional performance for a 12-month period following the receipt, by the guaranty agency or guaranty agency servicer, of the Secretary's notification of designation.

(v) A notice under this paragraph is determined to have been received no later than 3 days after the date the notice is mailed, unless the guaranty agency or guaranty agency servicer is able to prove otherwise.

(2) The Secretary determines whether to designate a guaranty agency or guaranty agency servicer for exceptional performance based upon--

(i) The annual financial audit and a compliance audit of collection activities, including timely claim payment and timely reinsurance filing required for FFEL Program loans under Secs. 682.410(b)(6)(iii) through (xii), and 682.406 (a)(8) and (a)(9), or Secs. 682.410(b)(7) and 682.406(a)(8) and (a)(9); and

(ii) Any other information in the possession of the Secretary.

(3) The Secretary informs the guaranty agency or guaranty agency servicer that its request for designation for exceptional performance has been approved, unless the results of the audit are persuasively rebutted by other information received by the Secretary. If the Secretary does not approve the guaranty agency's or guaranty agency servicer's request for designation, the Secretary informs the guaranty agency or guaranty agency servicer of the reason the application was not approved.

(4) In calculating a guaranty agency's or guaranty agency servicer's compliance rating, as referenced in paragraph (a)(2)(ii) of this section, the Secretary requires that the universe of loans in the audit sample must consist of all loans in the guaranty agency's or guaranty agency servicer's FFEL Program portfolio that are serviced during the audit period performed under the Department's regulations in Secs. 682.410(b)(6)(iii) through (xii) and 682.406(a)(8) and (a)(9) or Secs. 682.410(b)(7) and 682.406(a)(8) and (a)(9). The calculation may consider only the due diligence activities that were or should have been conducted during the audit period. The numerator must include the total number of collection activities successfully completed in accordance with program regulations on loans that were serviced during the audit period. The denominator must include the total number of collection activities required to be performed in compliance with program regulations on loans that were serviced during the audit period. Using statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General, a random sample of loans must be selected and evaluated.

(5) The Secretary notifies a guaranty agency or guaranty agency servicer, within 60 days after the date the Secretary receives the information listed in paragraph (a)(2) of this section whether the guaranty agency's or guaranty agency servicer's application for designation for exceptional performance has been approved or denied.

(6)(i) To maintain its status as an exceptional guaranty agency or guaranty agency servicer, the guaranty agency or guaranty agency servicer must have a quarterly compliance audit of the due diligence in collection activities of defaulted FFEL Program loans under Secs. 682.410(b)(6)(iii) through (xii) and 682.406(a)(8) and (a)(9) or 682.410(b)(7) and 682.406(a)(8) and (a)(9) conducted by a qualified independent organization meeting the criteria in paragraph (c)(9) of this section. The audit must yield a compliance performance rating of not less than 97 percent. The quarterly audit may not include any period covered by the annual financial and compliance audit required under paragraph (a)(2) of this section. The results of the quarterly compliance audit must be submitted to the Secretary within 90 days following the end of each quarter.

(ii) If the guaranty agency or guaranty agency servicer has been designated for exceptional performance for at least 15 months, the guaranty agency or a guaranty agency servicer may petition the Secretary for permission to have its internal auditors perform subsequent quarterly compliance audits required by paragraph (c)(6)(i) of this section. If the Secretary approves the request, the guaranty agency's or guaranty agency servicer's annual audit must assess the reliability of the procedures used by the guaranty agency's or the guaranty agency servicer's internal auditor in performing the quarterly audits.

(7)(i) Payments of reinsurance made on claims, under the FFEL Program, submitted by a guaranty agency or guaranty agency servicer designated for exceptional performance are not subject to repayment based on additional review of due diligence activities, including timely claim payment, or timely filing for reinsurance covering a period during which the guaranty agency or guaranty agency servicer was designated for any reason other than a determination by the Secretary that the eligible guaranty agency or guaranty agency servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance.

(ii) A guaranty agency designated under this section that fails to servicer loans or otherwise comply with applicable program regulations is considered in violation of 31 U.S.C. 3729.

(8)(i) The Secretary may revoke the designation of a guaranty agency or guaranty agency servicer for exceptional performance if the Secretary has reason to believe the guaranty agency or guaranty agency servicer fraudulently obtained its designation for exceptional performance.

(ii) The Secretary may revoke the designation for exceptional performance upon 30 days' notice, and an opportunity for a hearing before the Secretary, if the Secretary finds that the guaranty agency or guaranty agency servicer failed to maintain an acceptable overall level of regulatory compliance.

(9) A qualified independent organization is an organization that meets the criteria in paragraph (b)(9) of this section.

(d) *Definitions.* For purposes of this section--

(1) *Due diligence requirements* means the activities required to be performed by lenders or guaranty agencies on delinquent or defaulted loans pursuant to Sec. 682.411(c) through (h), and (m), if applicable and Secs. 682.410(b)(6) (iii) through (xii) and 682.406(a)(8) and (a)(9) or Secs. 682.410(b)(7) and 682.406(a)(8) and (a)(9);

(2) *Eligible loan* means a loan made, insured, or guaranteed under part B of title IV of the Act; and

(3) *Servicer* means an entity that services and collects student loans and that--

(i) Has substantial experience in servicing and collecting consumer loans or student loans;

(ii) Has an annual independent financial audit that is furnished to the Secretary and any other parties designated by the Secretary;

(iii) Has business systems capable of meeting the requirements of part B of title IV of the Act and applicable regulations;

(iv) Has adequate personnel knowledgeable about the student loan programs authorized by part B of title IV of the Act; and

(v) Does not knowingly have any owner, majority shareholder, director, or officer of the entity who has been convicted of a felony.

(Authority: 20 U.S.C. 1078-9)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section added June 24, 1994, effective July 1, 1995. OMB control number added June 12, 1995, effective July 1, 1995.

Sec. 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

(a) *Standards for administrative capability.* A third-party servicer is considered administratively responsible if it--

(1) Provides the services and administrative resources necessary to fulfill its contract with a lender or guaranty agency, and conducts all of its contractual obligations that apply to the FFEL programs in accordance with FFEL programs regulations;

(2) Has business systems including combined automated and manual systems, that are capable of meeting the requirements of part B of Title IV of the Act and with the FFEL programs regulations; and

(3) Has adequate personnel who are knowledgeable about the FFEL programs.

(b) *Standards of financial responsibility.* The Secretary applies the provisions of 34 CFR 668.15(b)(1)-(4) and (6)-(9) to determine that a third-party servicer is financially responsible under this part. References to "the institution" in those provisions shall be understood to mean the third-party servicer, for this purpose.

(c) *Special review of third-party servicer.* (1) The Secretary may review a third-party servicer to determine that it meets the administrative capability and financial responsibility standards in this section.

(2) In response to a request from the Secretary, the servicer shall provide evidence to demonstrate that it meets the administrative capability and financial responsibility standards in this section.

(3) The servicer may also provide evidence of why administrative action is unwarranted if it is unable to demonstrate that it meets the standards of this section.

(4) Based on the review of the materials provided by the servicer,the Secretary determines if the servicer meets the standards in this part. If the servicer does not, the Secretary may initiate an administrative proceeding under subpart G.

(d) *Past performance of third-party servicer or persons affiliated with servicer.* Notwithstanding paragraphs (b) and (c) of this section, a third-party servicer is not financially responsible if--

(1)(i) The servicer; its owner, majority shareholder, or chief executive officer; any person employed by the servicer in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds; any person, entity, or officer or employee of an entity with which the servicer contracts where that person, entity, or officer or employee of the entity acts in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving such funds, unless--

(A) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(B) The persons who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(C) At least five years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or administrative or judicial determination; or

(ii) The servicer, or any principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85), is--

(A) Debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(2) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1) of this section, the servicer does not promptly remove the person, agency, or organization from any involvement in the administration of the servicer's participation in Title IV, HEA programs, including, as applicable, the removal or elimination of any substantial control, as determined under 34 CFR 668.15, over the servicer.

(e) *Independent audits.* (1) A third-party servicer shall arrange for an independent audit of its administration of the FFELP loan portfolio unless--

(i) The servicer contracts with only one lender or guaranty agency; and

(ii) The audit of that lender's or guaranty agency's FFEL programs involves every aspect of the servicer's administration of those FFEL programs.

(2) The audit must--

(i) Examine the servicer's compliance with the Act and applicable regulations;

(ii) Examine the servicer's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Procedures for audits are contained in an audit guide developed by and available from the Office of Inspector General of the Department of Education; and

(iv) Except for the initial audit, be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be an annual audit of the servicer's first full fiscal year beginning on or after July 1, 1994, and include any period from the beginning of the first full fiscal year. The audit report must be submitted to the Secretary within six months of the end of the audit period. Each subsequent audit must cover the servicer's activities for the one-year period beginning no later than the end of the period covered by the preceding audit.

(3) With regard to a third-party servicer that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, Appendix G.

(4) With regard to a third-party servicer that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with Office of Management and Budget (OMB) Circular A-133, "Audit of Institutions of Higher Education and Other Nonprofit Institutions," as incorporated in 34 CFR 74.61(h)(3).

(f) *Contract responsibilities.* A lender that participates in the FFEL programs may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the requirements of this section. The lender must provide the Secretary with the name and address of any third-party servicer with which the lender enters into a contract and, upon request by the Secretary, a copy of that contract. A third-party servicer that is under contract with a lender to perform any activity for which the records in Sec. 682.414(a)(3)(ii) are relevant to perform the services for which the servicer has contracted shall maintain current, complete, and accurate records pertaining to each loan that the servicer is under contract to administer on behalf of the lender. The records must be maintained in a system that allows ready identification of each loan's current status.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p.235))

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: Section added April 29, 1994, effective July 1, 1994. OMB control number added July 7, 1994, effective July 7, 1994.

Sec. 682.417 Determination of reserve funds or assets to be returned.

(a) *General*. The procedures described in this section apply to a determination by the Secretary that--

(1) A guaranty agency must return to the Secretary a portion of its reserve funds which the Secretary has determined is unnecessary to pay the program expenses and contingent liabilities of the agency; and

(2) A guaranty agency must require the return to the agency or the Secretary of reserve funds or assets within the meaning of section 422(g)(1) of the Act held by or under the control of any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the agency or which are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

(b) *Return of unnecessary reserve funds*. (1) The Secretary may initiate a process to recover unnecessary reserve funds under paragraph (a)(1) of this section if the Secretary determines that a guaranty agency's reserve fund ratio under Sec. 682.410(a)(10) for each of the two preceding Federal fiscal years exceeded 2.0 percent.

(2) If the Secretary initiates a process to recover unnecessary reserve funds, the Secretary requires the return of a portion of the reserve funds that the Secretary determines will permit the agency to--

(i) Have a reserve fund ratio of at least 2.0 percent under Sec. 682.410(a)(10) at the time of the determination; and

(ii) Meet the minimum reserve fund requirements under Sec. 682.410(a)(10) and retain sufficient additional reserve funds to perform its responsibilities as a guaranty agency during the current Federal fiscal year and the four succeeding Federal fiscal years.

(3)(i) The Secretary makes a determination of the amount of the reserve funds needed by the guaranty agency under paragraph (b)(2) of this section on the basis of financial projections for the period described in that paragraph. If the agency provides projections for a period longer than the period referred to in that paragraph, the Secretary may consider those projections.

(ii) The Secretary may require a guaranty agency to provide financial projections in a form and on the basis of assumptions prescribed by the Secretary. If the Secretary requests the agency to provide financial projections, the agency shall provide the projections within 60 days of the Secretary's request. If the agency does not provide the projections within the specified time period, the Secretary determines the amount of reserve funds needed by the agency on the basis of other information.

(c) *Notice*. (1) The Secretary or an authorized Departmental official begins a proceeding to order a guaranty agency to return a portion of its reserve funds, or to direct the return of reserve funds or assets subject to return, by sending the guaranty agency a notice by certified mail, return receipt requested.

(2) The notice--

(i) Informs the guaranty agency of the Secretary's determination that the reserve funds or assets must be returned;

(ii) Describes the basis for the Secretary's determination and contains sufficient information to allow the guaranty agency to prepare and present an appeal;

(iii) States the date by which the return of reserve funds or assets must be completed;

(iv) Describes the process for appealing the determination, including the time for filing an appeal and the procedure for doing so; and

(v) Identifies any actions that the guaranty agency must take to ensure that the reserve funds or assets that are the subject of the notice are maintained and protected against use, expenditure, transfer, or other disbursement after the date of the Secretary's determination, and the basis for requiring those actions. The actions may include, but are not limited to, directing the agency to place the reserve funds in an escrow account. If the Secretary has directed the guaranty agency to require the return of reserve funds or assets held by or under the control of another entity, the guaranty agency shall ensure that the agency's claims to those funds or assets and the collectability of the agency's claims will not be compromised or jeopardized during an appeal. The guaranty agency shall also comply with all other applicable regulations relating to the use of reserve funds and assets.

(d) *Appeal*. (1) A guaranty agency may appeal the Secretary's determination that reserve funds or assets must be returned by filing a written notice of appeal within 20 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination. If the agency files a notice of appeal, the requirement that the return of reserve funds or assets be completed by a particular date is suspended pending completion of the appeal process. If the agency does not file a notice of appeal within the period specified in this paragraph, the Secretary's determination is final.

(2) A guaranty agency shall submit the information described in paragraph (d)(4) of this section within 45 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination unless the Secretary agrees to extend the period at the agency's request. If the agency does not submit that information within the prescribed period, the Secretary's determination is final.

(3) A guaranty agency's appeal of a determination that reserve funds or assets must be returned is considered and decided by a Departmental official other than the official who issued the determination or a subordinate of that official.

(4) In an appeal of the Secretary's determination, the guaranty agency shall--

(i) State the reasons the guaranty agency believes the reserve funds or assets need not be returned;

(ii) Identify any evidence on which the guaranty agency bases its position that the reserve funds or assets need not be returned;

(iii) Include copies of the documents that contain this evidence;

(iv) Include any arguments that the guaranty agency believes support its position that the reserve funds or assets need not be returned; and

(v) Identify the steps taken by the guaranty agency to comply with the requirements referred to in paragraph (c)(2)(v) of this section.

(5)(i) In its appeal, the guaranty agency may request the opportunity to make an oral argument to the deciding official for the purpose of clarifying any issues raised by the appeal. The deciding official provides such an opportunity promptly after the expiration of the period referred to in paragraph (d)(2) of this section.

(ii) The agency may not submit new evidence at or after the oral argument unless the deciding official determines otherwise. A transcript of the oral argument is made a part of the record of the appeal and is promptly provided to the agency.

(6) The guaranty agency has the burden of production and the burden of persuading the deciding official that the Secretary's determination should be modified or withdrawn.

(e) *Third-party participation.* (1) If the Secretary issues a determination under paragraph (a)(1) of this section, the Secretary promptly publishes a notice in the Federal Register announcing the portion of the reserve fund to be returned by the agency and providing interested persons an opportunity to submit written information relating to the determination within 30 days after the date of publication. The Secretary publishes the notice no earlier than five days after the agency receives a copy of the determination.

(2) If the guaranty agency to which the determination relates files a notice of appeal of the determination, the deciding official may consider any information submitted in response to the Federal Register notice. All information submitted by a third party is available for inspection and copying at the offices of the Department of Education in Washington, D.C., during normal business hours.

(f) *Adverse information.* If the deciding official considers information in addition to the evidence described in the notice of the Secretary's determination that is adverse to the guaranty agency's position on appeal, the deciding official informs the agency and provides it a reasonable opportunity to respond to the information without regard to the period referred to in paragraph (d)(2) of this section.

(g) *Decision.* (1) The deciding official issues a written decision on the guaranty agency's appeal within 45 days of the date on which the information described in paragraph (d)(4) and (d)(5)(ii) of this section is received, or the oral argument referred to in paragraph (d)(5) of this section is held, whichever is later. The deciding official mails the decision to the guaranty agency by certified mail, return receipt requested. The decision of the deciding official becomes the final decision of the Secretary 30 days after the deciding official issues it. In the case of a determination that a guaranty agency must return reserve funds, if the deciding official does not issue a decision within the prescribed period, the agency is no longer required to take the actions described in paragraph (c)(2)(v) of this section.

(2) A guaranty agency may not seek judicial review of the Secretary's determination to require the return of reserve funds or assets until the deciding official issues a decision.

(3) The deciding official's written decision includes the basis for the decision. The deciding official bases the decision only on evidence described in the notice of the Secretary's determination and on information properly submitted and considered by the deciding official under this section. The deciding official is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(h) *Collection of reserve funds or assets.* (1) If the deciding official's final decision requires the guaranty agency to return reserve funds, or requires the guaranty agency to require the return of reserve funds or assets to the agency or to the Secretary, the decision states a new date for compliance with the decision. The new date is no earlier than the date on which the decision becomes the final decision of the Secretary.

(2) If the guaranty agency fails to comply with the decision, the Secretary may recover the reserve funds from any funds due the agency from the Department without any further notice or procedure and may take any other action permitted or authorized by law to compel compliance.

(Authority: 20 U.S.C. 1072(g)(1))

(Approved by the Office of Management and Budget under Control Number 1840-0538)

Note: Section added November 25, 1994, effective July 1, 1995.

Sec. 682.418 Prohibited uses of reserve fund assets.

(a) *General.* (1) A guaranty agency may not use the assets of the reserve fund established under Sec. 682.410(a)(1) to pay costs prohibited under paragraph (b) of this section and may not use the assets of the reserve fund to pay for goods, property, or services provided by an affiliated organization that would exceed the affiliated organization's actual and reasonable cost of providing those goods, property, or services, unless the agency demonstrates to the Secretary, and receives the Secretary's concurrence, that such a payment would be in the Federal fiscal interest.

(2) All guaranty agency contracts with respect to its reserve fund or assets must include a provision stating that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that the contract includes an impermissible transfer of the reserve fund or assets or is otherwise inconsistent with the terms and purposes of section 422 of the HEA.

(b) *Prohibited uses of reserve fund assets.* A guaranty agency may use the assets of the reserve fund established under Sec. 682.410(a)(1) only as prescribed in Sec. 682.410(a)(2). Uses of the reserve fund that are not allowable under Sec. 682.410(a)(2) include, but are not limited to--

(1) *Compensation for personnel services,* including wages, salaries, pension plan costs, post-retirement health benefits, employee life insurance, unemployment benefit plans, severance pay, costs of leave, and other benefits, to the extent that total compensation to an employee, officer, director, trustee, or agent of the guaranty agency is not reasonable for the services rendered. Compensation is considered reasonable to the extent that it is comparable to that paid in the labor market in which the guaranty agency competes for the kind of employees involved. Costs that are otherwise unallowable may not be considered allowable solely on the basis that they constitute personnel compensation. In no case may the reserve fund be used to pay any compensation, whether calculated on an hourly basis or otherwise, that would be proportionately greater than 118.05 percent of the total salary paid (as calculated on an hourly basis) under section 5312 of title 5, United States Code (relating to Level I of the Executive Schedule).

(2) *Contributions and donations,* including cash, property, and services, by the guaranty agency to others, regardless of the recipient or purpose, unless pursuant to written authorization from the Secretary;

(3) *Entertainment*, including amusement, diversion, hospitality suites, and social activities, and any costs associated with those activities, such as tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, and gratuities;

(4) *Fines, penalties, damages, and other settlements* resulting from violations or alleged violations of the guaranty agency's failure to comply with Federal, State, or local laws and regulations that are unrelated to the FFEL Program, unless specifically approved by the Secretary. This prohibition does not apply if a non-criminal violation or alleged violation has been assessed against the guaranty agency, the payment does not reimburse an agency employee, and the payment does not exceed $1,000, or if it occurred as a result of compliance with specific requirements of the FFEL Program or in accordance with written instructions from the Secretary. The use of the reserve fund in any other case must be requested by the agency and specifically approved in advance by the Secretary;

(5) *Legal expenses* for prosecution of claims against the Federal Government, unless the guaranty agency substantially prevails on those claims. In that event, the Secretary approves the reimbursement of reasonable legal expenses incurred by the guaranty agency;

(6) *Lobbying activities*, as defined in section 501(h) of the Internal Revenue Code, including dues to membership organizations to the extent that those dues are used for lobbying;

(7) *Major expenditures*, including those for land, buildings, equipment, or information systems, whether singly or as a related group of expenditures, that exceed 5 percent of the guaranty agency's reserve fund balance at the time the expenditures are made, unless the agency has provided written notice of the intended expenditure to the Secretary 30 days before the agency makes or commits itself to the expenditure. For those expenditures involving the purchase of an asset, the term "major expenditure" applies to costs such as the cost of purchasing the asset and making improvements to it, the cost to put it in place, the net invoice price of the asset, ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation costs, and the costs of any modifications, attachments, accessories, or auxiliary apparatus necessary to make the asset usable for the purpose for which it was acquired, whether the expenditures are classified as capital or operating expenses;

(8) *Public relations*, and all associated costs, paid directly or through a third party, to the extent that those costs are used to promote or maintain a favorable image of the guaranty agency. The term "public relations" does not include any activity that is ordinary and necessary for the fulfillment of the agency's FFEL guaranty responsibilities under the HEA, including appropriate and reasonable advertising designed specifically to communicate with the public and program participants for the purpose of facilitating the agency's ability to fulfill its FFEL guaranty responsibilities under the HEA. Ordinary and necessary public relations activities include training of program participants and secondary school personnel and customer service functions that disseminate FFEL-related information and materials to schools, loan holders, prospective loan applicants, and their parents. In providing that training at workshops, conferences, or other ordinary and necessary forums customarily used by the agency to fulfill its responsibilities under the HEA, the agency may provide light meals and refreshments of a reasonable nature and amount to the participants;

(9) *Relocation of employees* in excess of an employee's actual or reasonably estimated expenses or for purposes that do not benefit the administration of the guaranty agency's FFEL program. Except as approved by the Secretary, reimbursement must be in accordance with an established written policy; and

(10) *Travel expenses* that are not in accordance with a written policy approved by the Secretary or a State policy. If the guaranty agency does not have such a policy, it may not use the assets of the reserve fund to pay for travel expenses that exceed those allowed for lodging and subsistence under subchapter I of Chapter 57 of title 5, United States Code, or in excess of commercial airfare costs for standard coach airfare, unless those accommodations would require circuitous routing, travel during unreasonable hours, excessively prolonged travel, would result in increased cost that would offset transportation savings, or would offer accommodations not reasonably adequate for the medical needs of the traveler.

(c) *Cost allocation*. Each guaranty agency that shares costs with any other program, agency, or organization shall develop a cost allocation plan consistent with the requirements described in OMB Circular A-87 and maintain the plan and related supporting documentation for audit. A guaranty agency is required to submit its cost allocation plans for the Secretary's approval if it is specifically requested to do so by the Secretary.

(Authority: 20 U.S.C. 1078)

Note: Section added November 27, 1996, effective July 1, 1997.

Subpart E--Federal Guaranteed Student Loan Programs

Sec. 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all--

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guaranty agency has in effect an agreement with the Secretary under Sec. 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guaranty agency that guarantees the largest dollar volume of FFEL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guaranty agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guaranty agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for--

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guaranty agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guaranty agency, a student who has previously received from the same lender a FISL loan that has not been repaid; or

(4) All students at a school located in the State if the Secretary finds that--

(i) No single guaranty agency program is reasonably accessible to students at that school as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to FFEL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if--

(A) The guaranty agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans but are not recognized as eligible under the guaranty agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender--

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal FFEL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under Sec. 682.600, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys that the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078-1, 1078-2, 1078-3, 1082)

Sec. 682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under Sec. 682.512, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year do not include paid claims filed by the lender under the provisions of Sec. 682.412(e) or 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less--

(i) The original principal amount of loans on which--

(A) Under the FISL program, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower;

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin and remains in deferment status; or

(D) The Secretary has paid a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under Sec. 682.412(e) or 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1082)

Sec. 682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers--

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d) of the Act and the definition of "lender" in Sec. 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d)(1) If the Secretary decides not to approve the application for a guarantee agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial or grant the lender an opportunity to appeal if the lender submits its application within six months of a previous denial.

(Authority: 30 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

Sec. 682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the agreement and the number or amount of Federal GSL loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are--

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) The Secretary may on a school-by-school basis impose limits under paragraph (b)(1)(iii) of this section on a school lender that makes loans to students or to parents of students in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees, of those other schools.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1082)

Sec. 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan will be guaranteed and of the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a Federal GSL loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in Sec. 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part.

(Authority: 20 U.S.C., 1078-1, 1078-2, 1078-3, 1079, 1082)

Sec. 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under Sec. 682.209(f).

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *FISL loans--insurance premium calculation.* (1) The insurance premium for FISL loans is calculated by--

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS and SLS Loans-insurance premium calculation.* The insurance premium for a Federal PLUS or SLS loan is calculated by--

(1) Using the projected repayment period as a base;

(2) Amortizing the loan in equal monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Computing the total of monthly amounts calculated under paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective if the lender fails to pay the insurance premium within 60 days of the date payment is due. However, the Secretary may excuse late payment of an insurance premium and reinstate the guarantee coverage on a loan if the Secretary is satisfied that at the time the premium is paid--

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1082)

Sec. 682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS loan in an amount that would--

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the period of enrollment for which the loan is intended less--

(i) The student's estimated financial assistance, and

(ii) The student's expected family contribution for that period, in the case of a FISL loan; or

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(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in Sec. 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under Sec. 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078-1, 1078-2, 1079, 1082, 1089)

Sec. 682.507 Due diligence in collecting a loan.

(a) *General.* (1) Except as provided in paragraph (a)(4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an authorized endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS or Consolidation loan as co-makers, the lender must follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in Sec. 682.411 in collecting a Federal GSL loan.

(b) *Initial delinquency.* If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower--

(1) At last six more times at regular intervals during the remainder of the six-month period that started on the date of delinquency for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period that started on the date of delinquency for loans repayable in installments less frequent than monthly.

(c) *Skip-tracing assistance.* (1) If a lender does not know the borrower's current address, the lender promptly shall attempt to locate the borrower through normal commercial collection activities, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender promptly shall attempt to learn the borrower's current address through use of the Department's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown to the lender.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys' fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall--

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that unless the borrower or endorser makes payments sufficient to bring the account out of default the lender will seek a judgment under which the borrower or endorser will be liable for payment of late charges, attorneys' fees, collection agency charges, court costs, and other reasonable collection costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys' fees, court costs, collection agency charges, and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1081, 1082, 1085)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a)(2) amended June 28, 1994, effective July 1, 1995.

Sec. 682.508 Assignment of a loan.

(a) *General.* A Federal GSL loan may not be assigned except to another eligible lender. For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(b)(1) *Procedure.* If the assignment of a FISL Program loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide separate notices to the borrower of--

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee shall provide the notice required by paragraph (b)(1) of this section separately. Each notice must indicate that a corresponding notice will be sent by the other party to the assignment.

(c) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under Sec. 682.503.

(d) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may cover only reductions that are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993.

Sec. 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in Sec. 682.511(e)(3), if--

(1) In the case of a loan that was not made or originated by the school, the lender learns that while the student was enrolled at the school the school terminated its teaching activities for that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not as a result of a claim filed with the Secretary under this section report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

Sec. 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in Sec. 682.402(a)-(d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition apply to the Federal GSL programs.

(b) For purposes of this section, references to the "guaranty agency" in Sec. 682.402(d)(5) shall be understood to refer to the Secretary.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1082, 1087)

Sec. 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL loan for any of the following reasons:

(i) The loan is in default, as defined in Sec. 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in Sec. 682.412(e)(2) or 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with Sec. 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, or a Consolidation loan was obtained jointly by a married couple, the reason for filing a claim must hold true for both applicants, or each applicant must have satisfied a claimable criterion at the time of the request for discharge of the loan.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender shall attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument.

(iv) A payment history, as described in Sec. 682.414(a)(3)(ii)(I).

(v) A collection history, as described in Sec. 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter if required by Sec. 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department for skip-tracing assistance under Sec. 682.507(c) and for preclaims assistance under Sec. 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in Sec. 682.402(e)(1) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in Sec. 682.402(e)(1) mean the Secretary.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim.

(d) *Bankruptcy subsequent to default.* If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with Sec. 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed by a lender pursuant to Sec. 682.412(e)(2), as directed in Sec. 682.208(f)(2), the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to Sec. 682.411(e) if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in Sec. 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the "guaranty agency" in Sec. 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to Sec. 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in Sec. 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to Sec. 682.509(a)(2).

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082, 1087)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a)(2) amended June 28, 1994, effective July 1, 1995.

Sec. 682.512 Determination of amount payable on a claim.

(a) *Default claims.* (1) *Amount payable.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received--

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by Sec. 682.202(b).

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in Sec. 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, that is required by the Secretary to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(3) *Recovery of outstanding debts.* The Secretary may reduce the amount of loss due to the lender on a claim by the amount the Secretary determines is owed to the Secretary by the lender.

(b) *Death, total and permanent disability, or bankruptcy claims.* (1) In the case of a death or disability claim, the amount to be paid on a valid claim--

(i) Is equal to the unpaid balance of the original principal loan amount disbursed if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with Sec. 682.402(f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with Sec. 682.402(f)(2) and (f)(3).

(3) For purposes of this section, references to the "guaranty agency" in Sec. 682.402(f)(3) mean the Secretary.

(c) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082, 1087)

Sec. 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in Sec. 682.509, the Secretary does not pay a claim unless--

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in Sec. 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in Sec. 682.511(b).

(b) Except as provided in Sec. 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim.

Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

Sec. 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078-1, 1078-2, 1078-3, 1080, 1082)

Sec. 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) *Records*. (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in Sec. 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in Sec. 682.414(a)(3)(ii)(C)-(K) on microfilm, optical disk, or other machine readable format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) *Reports*. A lender shall submit reports to the Secretary at the time and in the manner that the Secretary reasonably may require.

(c) *Inspections*. Upon request, a lender or its agent shall cooperate with the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include--

(1) Providing timely access for examination and copying to the records (including computerized records) required by applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not--

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel that do not include the presence of representatives of the lender's management; and

(iii) Refuse to permit personnel interviews with those personnel that are not recorded by the lender.

(Authority: 20 U.S.C. 1077, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993.

Subpart F--Requirements, Standards, and Payments for Participating Schools

Sec. 682.600 [Removed and Reserved]

Note: Section removed and reserved December 1, 1995, effective July 1, 1996.

Sec. 682.601 Rules for a school that makes or originates loans.

(a) *General*. To make or originate loans under the FFEL programs--

(1) The school shall employ full-time at least one person whose responsibilities are limited to the administration of financial aid programs for students attending the school;

(2) The school may not be a correspondence school;

(3) The school may not make or originate loans that would be outstanding to or on behalf of more than 50 percent of the undergraduates in attendance at that school on at least a half-time basis unless the Secretary waives this rule pursuant to paragraph (c) of this section;

(4) The school shall inform any undergraduate student who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commercial lender;

(5)(i) The school may not make or originate a loan for an academic period to a student described in paragraph (a)(4) of this section until the student provides the school with evidence under paragraph (b) of this section of denial of a loan by a commercial lender for the same academic period; and

(6) The school's cohort default rate as calculated under Sec. 668.17 may not exceed 15 percent; and

(7) Except for reasonable administrative expenses directly related to the FFEL Program, the school must use payments received under Sec. 682.300 and Sec. 682.302 for need-based grant programs for its students.

(ii) In determining whether a school has complied with the requirement set paragraph (a)(5)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (b) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(b) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender pursuant to paragraph (a)(4) of this section, the school shall obtain from the borrower--

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include--

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either--

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(c) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (a)(3) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering, among other factors--

(1) The extent to which the school provides and expects to continue providing educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who--

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll or continue their enrollment at that school without Stafford, SLS, or PLUS loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers educational programs that--

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's--

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1085)

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Note: OMB control number amended February 19, 1993, effective February 19, 1993. (a)(4) and (a)(5) amended and (a)(6) and (a)(7) added June 28, 1994, effective July 1, 1995.

Sec. 682.602 [Removed and Reserved]

Note: Section removed and reserved December 1, 1995, effective July 1, 1996.

Sec. 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to--

(1) The borrower's eligibility for a loan, as determined in accordance with Sec. 682.201 and Sec. 682.401(b) (1) and (2);

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought;

(4) For a Stafford loan, the student's eligibility for interest benefits, based on information provided by the student upon which the school can rely and as determined in accordance with Sec. 682.301; and

(5) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in Sec. 682.604(c)(6).

(c) removed and reserved

(d) A school may not certify a Stafford, PLUS, or SLS loan application, or combination of loan applications, for a loan amount that--

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in Sec. 682.204; or

(2) Exceeds the student's estimated cost of attendance, less--

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(e) A school may refuse to certify a Stafford, SLS, or PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided--

(1) The determination is made on a case-by-case basis;

(2) The documentation supporting the determination is retained in the student's file; and

(3) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

(f)(1) The minimum period of enrollment for which a school may certify a loan application is--

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of--

(A) The length of the student's program at the school; or

(B) The academic year as defined by the school in accordance with 34 CFR 668.2, (See paragraphs (b) and (c) of the definition of "Academic year.")

(2) The maximum period for which a school may certify a loan application is generally an academic year, as defined by 34 CFR 668.2, except that a guaranty agency may allow schools to use a longer period of time, not to exceed 12 months, corresponding to the period to which the agency applies the annual loan limits under Sec. 682.401(b)(2)(ii).

(3) In certifying a Stafford or SLS loan amount in accordance with Sec. 682.204--

(i) A program of study must be considered at least one full academic year if--

(A) The number of weeks of instruction time is at least 30 weeks; and

(B) The number of clock hours is at least 900, the number of semester or trimester hours is at least 24, or the number of quarter hours is at least 36.

(ii) A program of study must be considered two-thirds 2/3 of an academic year if--

(A) The number of weeks of instruction is at least 20 weeks; and

(B) The number of clock hours is at least 600, the number of semester or trimester hours is at least 16, or the number of quarter hours is at least 24.

(iii) A program of study must be considered one-third 1/3 of an academic year if--

(A) The number of weeks of instruction time is at least 10 weeks; and

(B) The number of clock hours is at least 300, the number of semester or trimester hours is at least 8, or the number of quarter hours is at least 12.

(4) In prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school certifies the loan.

(g) A school may not assess the borrower, or the student in the case of a PLUS loan, a fee for the completion or certification of any FFEL Program form or information or for providing any information necessary for a student or parent to receive a loan under part B of the Act or any benefits associated with such a loan.

(h) *Requesting loan proceeds.* (1) Pursuant to paragraph (b)(5) of the section, a school may not request the disbursement by the lender for loan proceeds earlier than the period specified in Sec. 668.167.

(2) For a borrower who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan, earlier than the 24th day of the student's period of enrollment.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (f)(3) and (h) added June 28, 1994, effective July 1, 1995. (h) amended December 1, 1994, effective July 1, 1995. (f)(4) added and (g) amended December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996. (b)(4), (b)(5), and (h)(1) amended; (b)(6) removed; and (c) removed and reserved November 29, 1996, effective July 1, 1997.

Sec. 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *General.* (1) This section establishes rules governing a school's processing of a borrower's Stafford, PLUS, or SLS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(2) Prior to a school delivering or crediting an FFEL loan account by EFT or master check, the school must provide the student or parent borrower with the notice as described under Sec. 668.165.

(3) If the school is placed under the reimbursement payment method as provided under Sec. 668.162, a school shall not disburse a loan, as provided in Sec. 668.167.

(b) *Releasing loan proceeds.* (1) Except as provided in Sec. 682.207(b)(1)(v)(C)(1), the proceeds of a Stafford, SLS or PLUS loan disbursed using electronic transfer of funds must be sent directly to the school by the lender.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines, after the school receives those proceeds from the lender, continuously has maintained eligibility in accordance with the provisions of Sec. 682.201, from the beginning of the loan period certified by the school on the student's loan application.

(ii) removed and reserved

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by Sec. 668.26.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file--

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance, and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended and then follow the procedures in paragraph (c) (2) of this section.

(2)(i) Except as provided in Sec. 682.207(b)(1)(v)(C)(1), after the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement of the student only, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 30 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the student and the school, the school shall--

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf, and, after the student has registered, deliver it to the student subject to paragraph (d)(2) of this section, within 30 days of the school's receipt of the check; or

(B) Obtain the student borrower's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, as specified in 668.164(e).

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school in accordance with Sec. 682.207(b)(1)(ii)(B), or by master check in accordance with Sec. 682.207(b)(1)(ii)(C), the school must, unless authorization was provided in the loan application, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's, or in the case of a Federal PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either--

(i) Deliver the proceeds to the student or parent borrower as specified in Sec. 668.164; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section and Sec. 668.164, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds not later than the timeframe specified in 668.164.

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in Sec. 668.22(j).

(5) A school may not release the first installment of a Stafford or SLS loan for endorsement to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford or SLS loan until 30 days after the first day of the student's program of study.

(6) Notwithstanding any other provision of this section, unless Sec. 682.207(c) (4) or (5) applies--

(i) If a loan period is more than one payment period, the school shall deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school shall make at least two deliveries of loan proceeds during that payment period. The school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period.

(7) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not deliver a second disbursement until the later of--

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(8) If an educational program measures academic progress in clock hours, the school may not deliver a second disbursement until the later of--

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the school, that the student has completed half of the clock hours in the loan period.

(9) The school must deliver loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, a school may not credit a registered student's account earlier than the period specified in Sec. 668.164.

(ii)(A) The school may credit a registered student's account with only those loan proceeds covering costs specified in Sec. 668.165(b)(2).

(B) The school shall maintain these funds, as provided in Sec. 668.165(b)(4).

(2) For purposes of paragraphs (c)(2)(i), (c)(2)(ii) and (c)(3) of this section, a school may not deliver loan proceeds earlier than the timeframe specified in Sec. 668.164.

(3) If a student does not register for the period of enrollment for which the loan was made, or a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made, the school shall return the proceeds to the lender no later than the period specified in Sec. 668.167.

(4) If the school is unable for any other reason to document that a registered student attended school during the period of enrollment for which the loan is made, the school, must determine the student's withdrawal date as required under Sec. 682.605(b)(1)(ii), and by the deadline described under Sec. 682.605(b)(1)(A) and (B) within 30 days of the period described in Sec. 682.607(c) shall notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender--

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(e) *Processing a late disbursement.* (1) A school may process a late disbursement received from a lender under Sec. 682.207(d) in accordance with Sec. 668.164(g).

(2) If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's educational charges, the school shall return the balance of the borrower's loan proceeds to the lender with a notice certifying--

(i) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period or payment period; and

(ii) The borrower's corrected financial need for the loan for that period of enrollment or payment period.

(f) *Initial counseling.* (1) Except in the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, a school shall conduct initial counseling with each Stafford borrower either in person, by audiovisual presentation or by computer assisted technology. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford loan made to the borrower for attendance at the school, unless the borrower has received a prior Stafford, SLS or Direct loan, and shall ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must--

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a borrower of a Stafford or SLS loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Stafford and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that--

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall--

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Stafford or SLS loans for attendance at that school or in the borrower's program of study.

(ii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan; and

(vi) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that will then be provided within 60 days to the guaranty agency or agencies listed in the borrower's records.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)-(g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* Except as provided under paragraph (i) of this section, or in the case of a student attending a foreign school, if, before the delivery of any Stafford or SLS loan disbursement, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was made that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either--

(1) Using the student's SLS, PLUS, nonsubsidized Stafford, or State-sponsored or private loan to cover the expected family contribution, if not already done;

(2)(i) Returning the entire undelivered disbursement to the lender or escrow agent; and

(ii) Providing the lender with a written statement--

(A) Describing the reason for the return of the funds, if any;

(B) Setting forth the student's revised financial need; and

(C) Directing the lender to re-disburse a revised amount and, if necessary, revise subsequent disbursements to eliminate the overaward; or

(3) Returning to the lender only the portion of the disbursement for which the student is ineligible and providing the lender with a written statement explaining the return of the funds.

(i) For purposes of paragraph (h) of this section, funds obtained from any Federal College Work-Study employment that do not exceed the borrower's financial need by more than $300 may not be considered as excess loan proceeds.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1082, 1085, 1092, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (c), (d), and (e) amended May 17, 1994,effective July 1, 1994. (c)(3) introductory text, (g)(2), introductory text of paragraph (h) amended and (i) added June 28, 1994, effective July 1, 1995. (d)(1)(ii)(B) removed and reserved, (e)(4) and (f)(1) amended November 29, 1994, effective July 1, 1995. (e)(3) removed; (e)(4) redesignated (e)(3); new (e)(3) introductory text amended December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996. (a), (b), (c), (d), and (e) amended November 29, 1996, effective July 1, 1997. (g)(2)(i) revised November 28, 1997, effective July 1, 1998.

Sec. 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in 34 CFR 668.22(j) for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in 34 CFR 668.22(j) except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school shall use the withdrawal date determined under 34 CFR 668.22(j) for the purpose of reporting to the lender the date that the student has withdrawn from the school.

(c) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month, day and year of the withdrawal date.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: Section amended December 1, 1995, effective July 1, 1996. OMB control number added April 17, 1996, effective July 1, 1996.

Sec. 682.606 [Removed and reserved]

Note: Section removed and reserved November 29, 1994, effective July 1, 1995.

Sec. 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school--

(1) Shall pay that portion of the student's refund that is allocable to a FFEL loan to--

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due--

(1) Within 60 days of the date that the student officially withdraws, is expelled, or the institution determines that a student has unofficially withdrawn, as determined in accordance with 34 CFR 668.22(j) and Sec. 682.605.

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under 34 CFR 668.22(j), within 30 days of the earlier of the date of expiration of the leave of absence or the date the student notifies the institution that the student will not be returning to the institution after the expiration of an approved leave of absence.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1094)

Note: (c)(1) amended November 29, 1994, effective July 1, 1995. (c) amended December 1, 1995, effective July 1, 1996.

Sec. 682.608 Termination of a school's lending eligibility.

(a) *General.* The Secretary may terminate a school's eligibility to make loans under this part if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary may terminate a school's eligibility to make loans if at the end of each of the 2 most recent consecutive Federal fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section as follows:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that--

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all FFEL loans made by the school whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that--

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will reduce the school's loan default rate significantly within the next year. Examples of those improvements include--

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on--

(i) The extent to which the school provides, and expects to continue to provide educational opportunities to economically disadvantaged students as measured by the percentage of students enrolled at the school who--

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll or continue their enrollment at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers educational programs that--

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its--

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary notifies the school of the proposed termination of its lending eligibility and provides an opportunity for a hearing before the Secretary terminates the school under this section.

(2) The Secretary or his designee begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice--

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed date the termination becomes effective; and

(iii) Informs the school that it has 15 days to--

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested an oral hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer--

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the designated official is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not--

(1) Make further loans under this part until it has entered into a new guarantee agreement with the Secretary; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determination required by this section by--

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085)

Sec. 682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary also may require a school to purchase from the holder of a FFEL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted in whole or in part from--

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FFEL programs, in accordance with 34 CFR part 668, subpart G.

(e) A school shall comply with any emergency action, limitation, suspension, or termination imposed by a guaranty agency in accordance with the agency's standards and procedures. A school shall repay funds to the Secretary or other party or purchase loans from a holder if a guaranty agency determines that the school improperly received or retained the funds in violation of a Federal law or regulation or a guaranty agency rule or regulation.

(Authority: 20 U.S.C. 1077, 1078 , 1078-1, 1078-2, 1082, 1094)

Sec. 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall--

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668;

(2) Follow the record retention and examination provisions in this part and in 34 CFR 668.24; and

(3) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the lender, that includes--

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of enrollment for which the loan was intended;

(4) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(5) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower; and

(6) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under Sec. 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan.

(c) *Student status confirmation reports.* A school shall--

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guaranty agency, complete and return that report within 30 days of receipt to the Secretary or the guaranty agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guaranty agency within the next 60 days, notify the guaranty agency or lender within 30 days--

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended;

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis; or

(iv) If it discovers that a student who is enrolled and who has received a Stafford or SLS loan has changed his or her permanent address.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: (a), (b), and (c) amended and (d), (e), and (f) removed November 27, 1996, effective July 1, 1997.

Sec. 682.611 Foreign schools.

A foreign school is required to comply with the provisions of this part, except to the extent that the Secretary states in this part or in other official publications or documents that those schools need not comply with those provisions.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1088, and 1094)

Note: Added December 1, 1995, effective July 1, 1996.

Subpart G--Limitation, Suspension, or Termination of Lender or Third-party Servicer Eligibility and Disqualification of Lenders and Schools

Sec. 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs or the eligibility of a third-party servicer to enter into a contract with an eligible lender to administer any aspect of the lender's FFEL programs. The regulations in this subpart apply to a lender or third-party servicer that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA prescribed under the FFEL programs. These regulations apply to lenders that participate only in a guaranty agency program, lenders that participate in the FFEL programs, and third-party servicers that administer aspects of a lender's FFELP portfolio. These regulations also govern the Secretary's disqualification of a lender or school from participation in the FFEL programs under section 432(h)(2) and (h)(3) of the Act.

(b) This subpart does not apply--

(1)(i) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in Sec. 682.200, for any reason other than a violation of the prohibitions in section 435(d)(5) of the Act; or

(ii) To a determination that an organization fails to meet the standards in Sec. 682.416;

(2) To a school's loss of lending eligibility under Sec. 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of--

(i) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act), which is governed by 34 CFR part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders or schools under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: (a) and (b)(1) amended April 29, 1994, effective July 1, 1994.

Sec. 682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental Official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification: The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guaranty agency.

Limitation. The continuation of a lender's or third-party servicer's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency, as applicable, or imposed as the result of a limitation or termination proceeding.

Suspension. The removal of a lender's eligibility, or a third-party servicer's eligibility to contract with a lender or guaranty agency, for a specified period of time or until the lender or servicer fulfills certain requirements.

Termination. (1) The removal of a lender's eligibility for an indefinite period of time--

(i) By a guaranty agency; or

(ii) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under Sec. 682.706; or

(2) The removal of a third-party servicer's eligibility to contract with a lender or guaranty agency for an indefinite period of time by the Secretary based on an action taken by the Secretary, or a designated Departmental official under Sec. 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender's responsibilities or rights to benefits and claim payments that are based on the lender's prior participation in the program, except as provided in paragraph (d) of this section and in Sec. 682.709.

(b) A limitation imposes on a lender--

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the FFEL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the FFEL programs; or

(3) Other reasonable requirements or conditions, including those described in Sec. 682.709.

(c) A limitation imposes on a third-party servicer--

(1) A limit on the number of loans or accounts or total amount of loans that the servicer may service;

(2) A limit on the number of loans or accounts or total amount of loans that the servicer is administering under its contract with a lender or guaranty agency; or

(3) Other reasonable requirements or conditions, including those described in Sec. 682.709.

(d) After the date the termination of a lender's eligibility becomes effective, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guaranty agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: (c) redesignated as (d), a new paragraph (c) added, and (a) amended April 29, 1994, effective July 1, 1994.

Sec. 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender or third-party servicer may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) Under the informal compliance procedure, the Secretary gives the lender or servicer a reasonable opportunity to--

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if--

(1) The delay would harm the FFEL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: (a) and (b) amended April 29, 1994, effective July 1, 1994.

Sec. 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies and to withhold payment of interest benefits and special allowance to a lender if the Secretary--

(1) Receives reliable information that the lender or a third-party servicer with which the lender contracts is in violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA pertaining to the lender's portfolio of loans;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender or third-party servicer, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The action becomes effective on the date the notice is mailed to the lender or third-party servicer.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period--

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender or third-party servicer, the Secretary may provide the lender or servicer with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: (a)(1), (b), (c), and (d)(2)(ii) amended April 29, 1994, effective July 1, 1994.

Sec. 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs or a third-party servicer's ability to enter into contracts with eligible lenders, and the Secretary does not guarantee or reinsure a new loan made by the lender or new loan serviced by the servicer during a period not to exceed 60 days from the date the suspension becomes effective, unless--

(i) The lender or servicer and the Secretary agree to an extension of the suspension period, if the lender or third-party servicer has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender or servicer a notice by certified mail with return receipt requested.

(2) The notice--

(i) Informs the lender or servicer of the Secretary's intent to suspend the lender's or servicer's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender or servicer that the suspension will not take effect on the proposed date, except as provided in paragraph (c)(8) of this section, if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender or servicer to correct voluntarily any alleged violations.

(c) *Hearing*. (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and--

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender or servicer of the effective date of the suspension.

(2) If the lender or servicer requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who--

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's or servicer's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, (28 U.S.C. Appendix) is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender or servicer.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender or servicer of the Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender or servicer, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 682.706 Limitation or termination proceedings.

(a) *Notice*. (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender or third-party servicer a notice by certified mail with return receipt requested.

(2) The notice--

(i) Informs the lender or servicer of the Secretary's intent to limit or terminate the lender's or servicer's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender or servicer that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender or servicer to correct voluntarily any alleged violations; and

(viii) Notifies the lender or servicer that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing*. (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and--

(i) Dismisses the proposed limitation or termination, or

(ii) Notifies the lender or servicer of the date the limitation or termination becomes effective.

(2) If the lender or servicer requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who--

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's or servicer's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure (28 U.S.C. appendix), is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender or third-party servicer and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender or third-party servicer rather than terminating the lender's or servicer's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender or servicer.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender or servicer and the Secretary or designated Departmental official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled nolo contendere or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or servicer's eligibility, respectively, to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender, third-party servicer, or designated Departmental official appeals the initial decision of the presiding officer in accordance with Sec. 682.706(b)(9)--

(1) An appeal is made to the Secretary by submitting to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's or servicer's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: (a) and (d) amended April 29, 1994, effective July 1, 1994.

Sec. 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be substantiated by the original receipts from the U.S. Postal Service.

(b) If a lender or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: (b) amended April 29, 1994, effective July 1, 1994.

Sec. 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender or third-party servicer to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender, or, in the case of a third-party servicer, the servicer or the lender that has a contract with a third-party servicer, improperly received, withheld, disbursed, or caused to be disbursed. A third-party servicer may be held liable up to the amounts specified in Sec. 682.413(a)(2).

(c) If a final decision requires a lender, a lender that has a contract with a third-party servicer, or a third-party servicer to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender, the lender that has a contract with the third-party servicer, or the third-party servicer. A third-party servicer may be held liable up to the amounts specified in Sec. 682.413(a)(2).

(Authority: 20 U.S.C. 1080, 1082, 1094)

Note: Section amended April 29, 1994, effective July 1, 1994.

Sec. 682.710 Removal of limitation.

(a) A lender or third-party servicer may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender or servicer has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary--

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender or servicer, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender or third-party servicer may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

Note: (a), (b), and (d) amended April 29, 1994, effective July 1, 1994.

Sec. 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the date the termination becomes effective.

(b) The request must be in writing and must show that--

(1) The lender or servicer has corrected any violations on which the termination was based; and

(2) The lender or servicer meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary--

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's or servicer's request or allows reinstatement subject to limitations, the lender or servicer, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender or third-party servicer whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs,

subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

(Approved by the Office of Management and Budget under control number 1840-0537)

Note: (a), (b)(1), (b)(2), and (e), amended April 29, 1994, effective July 1, 1994. OMB control number amended July 7, 1994, effective July 7, 1994.

Sec. 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a lender participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the lender of the Secretary's decision by mail.

(b) The Secretary disqualifies a lender from participation in the FFEL programs if--

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that--

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guaranty agency's action is final, e.g, the lender is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include--

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the lender that the Secretary will review the guaranty agency's action to determine whether to disqualify the lender from

further participation in the FFEL programs and affords the lender an opportunity--

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a lender under the FISL Program (34 CFR part 682, subpart G).

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if--

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has satisfied fully all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided satisfactory assurances to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the lender from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993.

Sec. 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guaranty agency against a school participating in the FFEL programs to determine if national disqualification is appropriate. Upon completion of the Secretary's review, the Secretary notifies the guaranty agency and the school of his decision by mail.

(b) The Secretary disqualifies a school from participation in the FFEL programs if--

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c)(1) Disqualification by the Secretary continues until the Secretary is satisfied that--

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the FFEL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guaranty agency shall refer a limitation, suspension, or termination action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guaranty agency's action is final, i.e., the institution is not entitled to any further appeals within the guaranty agency. A subsequent court challenge to an agency's action does not by itself affect the timing of the Secretary's review.

(f) The guaranty agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guaranty agency's letter initiating the action.

(2) The school's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or program review report or documented basis that led to the action.

(8) All other documents relevant to the action.

(g) The guaranty agency's referral notice to the Secretary regarding a limitation or suspension action must include--

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h)(1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exist, the Secretary notifies the school that the Secretary will review the guaranty agency's action to determine whether to disqualify the school from further participation in the FFEL programs and gives the school an opportunity within 30 days from the date the notice is mailed--

(i) To waive the review and be disqualified immediately; or

(ii) To request a review.

(i) The Secretary's review of the guaranty agency's action is limited to--

(1) A review of the written record of the agency's proceedings; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures established by the Secretary in 34 CFR part 668, subpart G.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if--

(1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guaranty agency determines that special circumstances warrant disqualification of the school from the FFEL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082, 1085, 1094)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993.

Subpart H--Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

Sec. 682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

(a) The Secretary pays a special allowance on a loan that was made or acquired with the proceeds of an obligation exempt from taxation under section 103 of the Internal Revenue Code of 1986 and is held by or on behalf of an Authority if--

(1) For loans financed by an obligation issued after December 31, 1980 and before November 16, 1986, the Secretary approved--

(i) The Plan for Doing Business of the Authority that issued the obligation; and

(ii) The justification of need for the obligation if the obligation was issued after August 14, 1983; or

(2) The Plan for Doing Business of the Authority that issued the obligations has been approved by the Governor of the State from which the Authority received or will seek an allocation under section 103(n) of the Internal Revenue Code of 1986 after consultation with the principal guaranty agency for the State.

(b) The Secretary pays a special allowance--

(1) For loans described in paragraph (a)(1) of this section from the latest of--

(i) The date the Secretary approved the Plan for Doing Business of the Authority;

(ii) The date the Secretary approved the justification of need for the obligation, if issued after August 14, 1983; or

(iii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation.

(2) For a loan described in paragraph (a)(2) of this section, from the latest of--

(i) The date the Governor approved the Plan for Doing Business of the Authority;

(ii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation; or

(iii) November 16, 1986, if the loan was made or acquired with the proceeds of a tax-exempt obligation issued before that date by an Authority that did not receive before that date approval from the Secretary for its Plan for Doing Business, and, if applicable, its justification of need.

(c) The Authority shall submit a copy of the Plan for Doing Business to the Secretary under paragraph (a)(2) of this section within 60 days after receiving the Governor's approval.

(d) As used in this paragraph, the term principal guaranty agency means--

(1) The guaranty agency in the State with which the Secretary has signed a Basic Program Agreement under Sec. 682.401; or

(2) If the Secretary has signed agreements with more than one agency in the State, the agency that has issued the majority of loan guarantees for students who are attending school in the State during the most recently ended Federal fiscal year.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Sec. 682.801 Provisions required in Plan.

Each Plan submitted for the approval of the Governor must contain provisions necessary to ensure that--

(a) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(b) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(c) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(d) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of or who seek loans for a student to attend a school within the service area of the Authority;

(e) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under the FFEL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program.

(f) The Authority shall not purchase student loans at a premium amounting to more than one percent of the unpaid principal amount borrowed plus interest accrued to the date of acquisition.

(Authority: 20 U.S.C. 1082, 1087-1)

Note: (e) amended January 12, 1994, effective February 1, 1993. (f) added May 17, 1994, effective July 1, 1994.

Sec. 682.802 Submission of Plan for approval--required documentation.

An Authority shall submit with or include in each Plan submitted for the approval of the Governor the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority has a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or

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receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of the loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within, its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under each of the FFEL programs and the maintenance of existing lender commitments to the programs.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in Sec. 682.830.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information by which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Authority: 20 U.S.C. 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993.

Sec. 682.803 Amendments to Plan for Doing Business.

(a) After a Plan is approved, an Authority shall submit to the Governor or the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that--

(1) An Authority amends any provision of a Plan that had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to Sec. 682.802 is revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Authority: 20 U.S.C. 1082, 1087-1)

(Approved by the Office of Management and Budget under control number 1840-0538)

Note: OMB control number amended February 19, 1993, effective February 19, 1993.

Sec. 682.804 Failure to comply with Plan for Doing Business.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

Sec. 682.805 Sanctions for material misrepresentation.

(a) If at any time the Secretary determines that the submission for approval of a tax-exempt obligation or a Plan for Doing Business contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section--

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in Sec. 682.804 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

Secs. 682.806-682.829 [Reserved]

Sec. 682.830 Audit standards.

(a) An Authority that is a governmental entity must be audited regarding its lending and loan purchasing program for compliance with its Plan and the provisions of Sec. 682.801 in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(b) An Authority that is a nonprofit organization must undergo an audit of its lending and loan purchasing program for compliance with its Plan and the provisions of Sec. 682.801--

(1) Conducted in accordance with OMB Circular A-133 and any supplementary compliance guidelines issued by OMB and the Secretary; or

(2) If the Authority qualifies to submit a program-specific audit under criteria in OMB Circular A-133 and chooses to have such an audit performed, conducted in accordance with standards issued by the General Accounting Office (GAO) publication, Government Auditing Standards, and by the Office of Inspector General of the Department contained in the applicable audit guide.

(c) The audit must be conducted annually and the audit report must be submitted within 30 days of the completion of the audit report but no later than six months after the close of the audit period.

(d) Audits must be submitted to the regional office of the Office of Inspector General of the Department, to the Governor who approved the Plan of the Authority, and to the principal guaranty agency consulted by the Governor in approving that Plan.

(Authority: 20 U.S.C. 1082, 1087-1)

Secs. 682.831-682.839 [Reserved]

Sec. 682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) For an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the FFEL programs because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

(Authority: 20 U.S.C. 1082, 1087-1)

Appendix A [Removed and Reserved]

Note: Appendix removed November 29, 1994, effective July 1, 1995.

Appendix B--Student Status Confirmation Report

This appendix sets forth the required format and data elements for guarantee agencies to use in implementing a manual or automated Student Status Confirmation Report system as required by Sec. 682.401(b)(18).

Student Status Confirmation Report

DATE: MM/DD/YY GUARANTOR/INSTITUTION CODE: (must accommodate eight numeric characters)

GUARANTOR/INSTITUTION NAME:

SOCIAL SECURITY NUMBER NAME

PERMANENT ADDRESS

CORRECTION CORRECTION

CORRECTION

*STATUS EFFECTIVE DATE

ANTICIPATED GRADUATION DATE

CORRECTION

*The valid enrollment status codes are as follows:

F=Full-time

H=Half-time or more but less than full-time.

L=Less than half-time. This code is used to specify students enrolled less than half-time.

X=Never attended the institution. This code is to specify those individuals on whose behalf a Stafford, SLS, or PLUS loan was made who enrolled in school but never attended classes.

Z=No record found. A thorough search of the institution's enrolled records revealed no information for this individual.

D=Deceased

A=Approved leave of absence

G=Graduated

W=Withdrawn

COMPLETED BY:

NAME
TITLE
TELEPHONE NUMBER
CERTIFICATION DATE

The following definitions apply to the SSCR data elements.

Data element	Definition
Date MM/DD/YY	Date report is run and considered to be issued to school
Social security number	Valid 9-digit SSN assigned by Social Security Administration to student borrower or student on whose behalf a PLUS loan was borrowed
Name	Last name, first name and middle initial of student borrower or student on whose behalf a PLUS loan was borrowed
Address	Last known permanent address of student
Anticipated graduation date	Date recorded on agency's system. Please note any corrections to this date
Effective date	Effective date of status reported, as follows
	Full-time status, no record found and never attended--the report certification date
	Half-time status--(1) the date the student dropped below full-time, or (2)if half-time status is the original enrollment status, the report certification date
	Less than half-time status--the date the student dropped below half-time
	Leave of absence--the date the student began a leave of absence approved in accordance with Sec. 682.605(c)
	Graduated--the date the student completed the course requirements (not the date of the presentation of the diploma)
	Withdrawn--the date the student officially withdrew as determined by the school in accordance with Sec. 682.605(b)
Certification date	The date the institution completed the SSCR
Other information	Please note any corrections to SSN, name, or permanent address of which you are aware. Please note the effective date of this information to avoid replacing newer information with old

Appendix C--Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Note: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to FFELP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5), (6), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period, the loan entered repayment prior to September 4, 1985 (see 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. One exception to this rule is as follows: If the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the

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[1] All references to the program regulations are to part 682 of title 34 of the Code of Federal Regulations (34 CFR part 682).

468

90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured, that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

Reinstatement with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's right to receive interest and special allowance payments is addressed in section I.B.1. below.

B. General

1. *Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations.* For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. *Reservation of the Secretary's Right to Strict Enforcement.* While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulations.

3. *Applicability of the Cure Procedures to Particular Classes of Loans.* The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations only of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

4. *Excusal of Certain Due Diligence Violations.* A lender whose claim was previously denied solely for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

5. *Treatment of Accrued Interest on "Cured" Claims--a. Due Diligence Violations.* For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. *Timely Filing Violations.* For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

6. *Documents to be Submitted with "Cured" Claims.* The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new ED Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original ED Form 1207 and all documents showing the reason(s) for the original rejection;

- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;

- A new ED Form 1207; and

- All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. *Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)*

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;

- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;

- Request preclaims assistance from the Department of Education;

- Request skip-tracing assistance from the Secretary, if required, or

- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. *Reinstatement of Insurance Coverage.* In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) The lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7); or

(b) The lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (e.g., copies of the checks) with the claim.

2. *Borrower's Deemed Current As of Date of Cure.* On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. *Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)*

1. *Default Claims*--a. *Reinstatement of Insurance Coverage.* In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's

delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "48 hour" collection letter, on the lender's letterhead. (See attachment A.)

b. *Borrower Deemed Current Under Certain Circumstances.* If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps in 34 CFR 682.507 and the timely filing requirements in 34 CFR 682.511.

c. *Borrower Deemed in Default Under Certain Circumstances.* If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(ii) A completed "Certification of Borrower Location" form (Attachment B).

2. *Death, Disability, and Bankruptcy Claims.* Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirements (see 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender knows involves a due diligence or timely filing violation must cease doing so immediately. However, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. *Due Diligence Violations.* In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender knows involves a due diligence violation must promptly repay those amounts.

2. *Timely Filing Violations.* In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. *Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured.* Because most due diligence violations, and timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. *Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period.* In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However, the lender need not repay that interest to the Secretary. See II.C.1. above.

b. *Deferment Periods.* A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. *Loans Made Prior to December 15, 1968.* A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. *Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured*

A lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. For five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s), and the date it used for cessation of interest or special allowance eligibility in calculating the overbilled amount. See 34 CFR 682.515(a)(2).

Attachment B

Certification of Borrower Location

As an employee or agent of

Name and Address of Lender

I hereby certify as follows:

1. On (Date), I spoke with or received written communication from (copy attached):

(Circle a or b)

(a) the borrower on the loan underlying the default claim, or

(b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are--______________________.

Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983, to the address set out in 2, above.

4. (Applicable only if 1(b), above, is used.) The letter and agreement referenced in 3, above, has not been returned undelivered.

____
Name of Borrower

____
Borrower's SSN

____
Signature of Employee or Agent

____
Typed Name of Employee or Agent

____
Title of Employee or Agent

____
Date

____
Lender Identification Number

Appendix D--Policy for Waiving the Secretary's Right To Recover or Refuse To Pay, Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88-G-138]

Note: The following is a reprint of Bulletin 88-G-138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections Sec. 432(a)(5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of his rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Programs.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, Sec. 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. See 34 CFR 682.406(a)(3), (a)(5), and 682.413(b). The regulations also specify that a lender must comply with Sec. 682.411 and with the applicable filing deadline, as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. See 34 CFR 682.300(b)(2)(vi), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may "cure" a violation of Sec. 682.411 regarding diligent loan collection, or of the 90-day deadline for the filing of default claims found in Sec. 682.406(a)(3) and (a)(5), in order to reinstate the agency's right to reinsurance, and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under Sec. 682.406(b) and 682.413(f), the Secretary--not the guaranty agency--decides whether to reinstate reinsurance coverage on a loan involving such a violation, or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. See 682.406(a)(7); and 682.413(b). As 682.406(a)(7) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all such requirements must be submitted to the Secretary for review and approval, under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guaranty Agency to Enforce Its Standards

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guarantee agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1., below. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 180 days for loans payable in monthly installments, or for 240 days for loans payable in less frequent installments. The 180/240-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on September 29th, when the April payment becomes 180 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. See 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

The 90-day filing period applicable to FFEL Program default claims is set forth in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 180/240-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 270th day of delinquency (180-day default period plus 90-day filing period) if the borrower brings the account less than 180 days delinquent before such 270th day. Thus, in the above example, if the borrower makes the April 1st payment on September 30th, that payment makes the loan 151 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 180 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if such payments are sufficient to make the loan less than 180 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan, and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter.

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a "full payment" only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

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Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. "Reinstatement" with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

"Gap" in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

Note: the concept of "gap" is used herein simply as one measure of collection activity. This definition applies to loans subject to the FFEL and PLUS programs regulations published on November 10, 1986. For such loans, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in Sec. 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the delinquency period, a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. *Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations.* For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. *Reservation of the Secretary's Right to Strict Enforcement.* While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules, and in cases where the best interests of the United States otherwise require such strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. *Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority.* The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guaranty agency and lender shall ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below, by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

(2) The guaranty agency, on or before October 1, 1988, shall repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. *Applicability of the Waiver Policy to Particular Classes of Loans.* The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day default period that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence and/or timely filing requirements. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

5. *Excuse of Certain Due Diligence Violations*. Except as noted in section II, below, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. Guarantors must review the due diligence for the 180-day period prior to the default date ensuring the due date of the first payment not later made is the correct payment due date for the borrower.

6. *Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures*. If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency, and files a default claim on the loan not more than 45 days after completing the additional activities.

7. *Treatment of Accrued Interest on "Cured" Claims*. For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., below, for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in such cases, see Section I.E.1.c., below.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made.

The special provisions for transfers set forth below apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A., above.

1. *Retrospective Period*. For one or more due diligence violations occurring during the period March 10, 1987-April 30, 1988--

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46-60 days (61-75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (See section I.E.1.d., below, for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. *Prospective Period*. For due diligence violations occurring on or after May 1, 1988--

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exists not more than 2 violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exists 3 violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exists more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. *Cures.* In the case of a loan involving violations described in section I.C.2.d., above, the lender may utilize either of the two procedures described below for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. *Borrower Deemed Current as of Date of Cure.* On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., above, reinsurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender shall then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. *Default Claims--a. Reinstatement of Insurance Coverage.* Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (See section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5-10 days after completing these efforts, the lender shall again diligently attempt to contact the borrower by telephone. Finally, within 5-10 days after completing these efforts, the lender shall send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. *Borrower Deemed Current Under Certain Circumstances.* If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default.

In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. *Borrower Deemed in Default Under Certain Circumstances.* If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d., below), within 30 days after the end of such 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, on unpaid interest as provided in section I.B.7., above, and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing--

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that--

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower,

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication, and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., above, had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. *Death, Disability, and Bankruptcy Claims.* The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (see 34 CFR 682.402(e)(2)(i)). However, the Secretary will not reimburse the guaranty agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary had determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (Sec. 682.402(e)(2)(ii)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy, or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender shall return the borrower to the appropriate status that existed prior to the filing of the bankruptcy claim. The Secretary will not reimburse the guaranty agency for interest accruing beyond the filing deadline for the bankruptcy claim.

II. Due Date of First Payment

Section 682.411(b)(1) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on a FFEL programs loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment. (Unless the lender establishes the first day of repayment under Sec. 682.209(a)(3)(ii)(E).)

In cases where the lender learns that the borrower has entered the repayment period after the fact, current Sec. 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice. (Unless the lender establishes the first day of repayment under Sec. 682.209(a)(3)(ii)(E).) In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period", a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by Sec. 682.411(c) to be sent within the first 30 days of delinquency, and will thus have committed two violations of more than five days of that rule.

Please Note: References to the "65th day after receipt of the notice" and "66th day" in the preceding paragraphs should be amended to read "95th day" and "96th day" respectively for lenders subject to Sec. 682.209(a)(3)(ii)(E).

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent, and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., above, that only violations occurring during the most recent 180 days of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guarantee agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions are set forth below. Note: The answer to questions 1 and 4 are applicable only to loans subject to Sec. 682.411 of the FFEL and PLUS program regulations published on November 10, 1986.

Q1.: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

Q2.: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

Q3.: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

Q4.: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender shall treat the payment as having never been made for purposes of determining the number of days delinquent that the borrower is at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with Sec. 682.411, commencing with the first 30-day delinquency period described in Sec. 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result obtains when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

Note: Appendix amended May 17, 1994, effective July 1, 1994.

PART 685--WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

Subpart A--Purpose and Scope

Sec.

685.100 The William D. Ford Federal Direct Loan Program.

685.101 Participation in the Direct Loan Program.

685.102 Definitions.

685.103 Applicability of subparts.

Subpart B--Borrower Provisions

685.200 Borrower eligibility.

685.201 Obtaining a loan.

685.202 Charges for which Direct Loan Program borrowers are responsible.

685.203 Loan limits.

685.204 Deferment.

685.205 Forbearance.

685.206 Borrower responsibilities and defenses.

685.207 Obligation to repay.

685.208 Repayment plans.

685.209 Income contingent repayment plan.

685.210 Choice of repayment plan.

685.211 Miscellaneous repayment provisions.

685.212 Discharge of a loan obligation.

685.213 Closed school discharge.

685.214 Discharge for false certification of student eligibility or unauthorized payment.

685.215 Consolidation.

Subpart C--Requirements, Standards and Payments for Direct Loan Program Schools

685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

685.301 Origination of a loan by a Direct Loan Program school.

685.302 Schedule requirements for courses of study by correspondence.

685.303 Processing loan proceeds.

685.304 Counseling Borrowers.

685.305 Determining the date of a student's withdrawal.

685.306 Payment of a refund to the Secretary.

685.307 Withdrawal procedure for schools participating in the Direct Loan Program.

685.308 Remedial actions.

685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

Subpart D--School Participation and Loan Origination in the Direct Loan Program

685.400 School participation requirements for academic years 1996-1997 and beyond.

685.401 Selection criteria and process for academic years 1996-1997 and beyond.

685.402 Criteria for schools to originate loans for academic years 1996-1997 and beyond.

Appendix A--Income Contingent Repayment

(Authority: 20 U.S.C. 1087a et seq., unless otherwise noted)

Note: Authority amended December 1, 1994. Heading amended December 1, 1994, effective July 1, 1995.

Subpart A--Purpose and Scope

Sec. 685.100 The William D. Ford Federal Direct Loan Program.

(a) Under the William D. Ford Federal Direct Loan (Direct Loan) Program (formerly known as the Federal Direct

Student Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at a postsecondary school. This part governs the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Direct Consolidation Loan Program. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford/Ford Loan Program (formerly known as the Federal Direct Stafford Loan Program), which provides loans to undergraduate, graduate, and professional students. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(2) Federal Direct Unsubsidized Stafford/Ford Loan Program (formerly known as the Federal Direct Unsubsidized Stafford Loan Program), which provides loans to undergraduate, graduate and professional students. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students. The borrower is responsible for the interest that accrues during any period.

(4) Federal Direct Consolidation Loan Program, which provides loans to borrowers to consolidate certain Federal educational loans.

(b) The Secretary makes a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the Direct Loan Program.

(c) The Secretary makes a Direct Consolidation Loan only to--

(1) A borrower with a loan made under the Direct Loan Program; or

(2) A borrower with a loan made under the Federal Family Education Loan Program who is not able to receive--

(i) A Federal Consolidation Loan; or

(ii) A Federal Consolidation Loan with income-sensitive repayment terms that are satisfactory to the borrower.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.101 Participation in the Direct Loan Program.

(a)(1) Colleges, universities, graduate and professional schools, vocational schools, and proprietary schools selected by the Secretary may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of attendance at the school.

(2) The Secretary may permit a school to participate in both the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR Part 600, and the Direct Loan Program. A school permitted to participate in both the FFEL Program and the Direct Loan Program may certify loan applications under the FFEL Program according to the terms of its agreement with the Secretary.

(b) An eligible student who is enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Programs. An eligible parent of an eligible dependent student enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.102 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Disburse
Eligible program
Eligible student
Enrolled
Federal Consolidation Loan Program
Federal Direct Student Loan Program (Direct Loan Program)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Independent student
One-third of an academic year
Payment period
Parent
State

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Two-thirds of an academic year
U.S. citizen or national

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR Part 600:

Accredited
Clock hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) Program
Institution of higher education
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the Federal Family Education Loan (FFEL) Program, 34 CFR Part 682:

Act
Endorser
Expected family contribution
Federal Insured Student Loan (FISL) Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Totally and permanently disabled
Undergraduate student

(b) The following definitions also apply to this part:

Alternative originator: An entity under contract with the Secretary that originates Direct Loans to students and parents of students who attend a Direct Loan Program school that does not originate loans.

Consortium: For purposes of this part, a consortium is a group of two or more schools that interacts with the Secretary in the same manner as other schools, except that the electronic communication between the Secretary and the schools is channeled through a single point. Each school in a consortium shall sign a Direct Loan Program participation agreement with the Secretary and be responsible for the information it supplies through the consortium.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for 180 days.

Estimated financial assistance: (1) The estimated amount of assistance for a period of enrollment that a student (or a parent on behalf of a student) will receive from Federal, State, institutional, or other sources, such as scholarships, grants, financial need-based employment, or loans, including but not limited to--

(i) Veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97-376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96-342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including but not limited to a Federal Pell Grant, campus-based aid, and the gross amount (including fees) of a Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loan.

(2) Estimated financial assistance does not include--

(i) Those amounts used to replace the expected family contribution, including--

(A) Direct PLUS Loan amounts;

(B) Direct Unsubsidized Loan amounts; and

(C) Non-Federal loan amounts; and

(ii) Federal Perkins loan and Federal Work-Study funds that the student has declined.

Federal Direct Consolidation Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to borrowers who consolidate certain Federal educational loan(s), and one of the components of the Direct Loan Program. Loans made under this program are referred to as

Direct Consolidation Loans. There are three types of Direct Consolidation Loans:

(1) Direct Subsidized Consolidation Loans. Subsidized title IV education loans may be consolidated into a Direct Subsidized Consolidation Loan. Interest is not charged to the borrower during in-school, grace, and deferment periods.

(2) Direct Unsubsidized Consolidation Loans. Certain Federal education loans may be consolidated into a Direct Unsubsidized Consolidation Loan. The borrower is responsible for the interest that accrues during any period.

(3) Direct PLUS Consolidation Loans. Parent Loans for Undergraduate Students, Federal PLUS, Direct PLUS, and Direct PLUS Consolidation Loans may be consolidated into a Direct PLUS Consolidation Loan. The borrower is responsible for the interest that accrues during any period.

Federal Direct PLUS Program: A loan program authorized by title IV, part D of the Act that provides loans to parents of dependent students attending schools that participate in the Direct Loan Program, and one of the components of the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct PLUS Loans.

Federal Direct Stafford/Ford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period. Loans made under this program are referred to as Direct Subsidized Loans.

Federal Direct Unsubsidized Stafford/Ford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools, and one of the components of the Direct Loan Program. The borrower is responsible for the interest that accrues during any period. Loans made under this program are referred to as Direct Unsubsidized Loans.

Grace period: A six-month period that begins on the day after a Direct Loan Program borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-time student: A student who is not a full-time student and who is enrolled in a school participating in the FFEL Program or the Direct Loan Program and is carrying an academic workload that is at least one-half the workload of a full-time student, as determined by the school. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Interest rate: The annual interest rate that is charged on a loan, under title IV, part D of the Act.

Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program.

Period of enrollment: The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more academic terms established by the school (such as semester, trimester, quarter, academic year, and length of the program of study), for which institutional charges are generally assessed. The period of enrollment is also referred to in this part as the loan period.

Satisfactory repayment arrangement. (1) For the purpose of regaining eligibility under section 428F(b) of the HEA, the making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For the purpose of consolidating a defaulted loan under 34 CFR 685.215(d)(1)(ii)(E), the making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan.

(3) The required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. "On- time" means a payment made within 15 days of the scheduled due date, and voluntary payments are those payments made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

School origination option 1: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer initiates the drawdown of funds for schools participating in school origination option 1. The Secretary may modify the functions performed by a particular school.

School origination option 2: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, prepares the promissory note, obtains a completed and signed promissory note from a borrower, transmits the promissory note to the Servicer, determines funding needs, initiates the drawdown of funds, receives the funds electronically, disburses a loan to a borrower, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Secretary may modify the functions performed by a particular school.

Servicer: An entity that has contracted with the Secretary to act as the Secretary's agent in providing services relating to the origination or servicing of Direct Loans.

Standard origination: In general, under this option the school performs the following functions: creates a loan origination record, transmits the record to the Servicer, receives funds electronically, disburses funds, creates a disbursement record, transmits the disbursement record to the Servicer, and reconciles on a monthly basis. The Servicer prepares the promissory note, obtains a completed and signed promissory note from a borrower, and initiates the drawdown of funds for schools participating in standard origination. The Secretary may modify the functions performed by a particular school.

(Authority: 20 U.S.C. 1087a et seq.)

Note: "School origination option 1," "School origination option 2," and "Standard origination" definitions amended December 1, 1995, effective July 1, 1996. (a)(3) and (b) revised June 12, 1996, effective July 12, 1996. (a)(1) introductory clause amended and "Payment period" added to (a)(1) November 29, 1996, effective July 1, 1997.

Sec. 685.103 Applicability of subparts.

(a) Subpart A contains general provisions regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions regarding borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements regarding schools in the Direct Loan Program.

(d) Subpart D contains provisions regarding school eligibility for participation and origination in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

Subpart B–Borrower Provisions

Sec. 685.200 Borrower eligibility.

(a) *Student borrower.* (1) A student is eligible to receive a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a combination of these loans, if the student meets the following requirements:

(i) The student is enrolled, or accepted for enrollment, on at least a half-time basis in a school that participates in the Direct Loan Program.

(ii) The student meets the requirements for an eligible student under 34 CFR Part 668.

(iii) In the case of an undergraduate student who seeks a Direct Subsidized Loan or a Direct Unsubsidized Loan at a school that participates in the Federal Pell Grant Program, the student has received a determination of Federal Pell Grant eligibility for the period of enrollment for which the loan is sought.

(iv) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, the student--

(A) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity; and

(B) Signs a statement acknowledging that the Direct Loan the borrower receives cannot be cancelled in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates.

(v) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR 668.7(b).

(2)(i) A Direct Subsidized Loan borrower must demonstrate financial need in accordance with title IV, part F of the Act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization--

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(1) Directs the member to pursue the course of study; or

(2) Provides subsistence support to its members.

(b) *Parent borrower.* (1) A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(i) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR Part 668.

(ii) The parent provides his or her and the student's social security number.

(iii) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.7.

(iv) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7.

(v) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR Part 668, except for the completion of a Statement of Selective Service Registration Status.

(vi) The parent meets the requirements that apply to a student under paragraph (a)(1)(iv) of this section.

(vii)(A) The parent–

(1) Does not have an adverse credit history;

(2) Has an adverse credit history but has obtained an endorser who does not have an adverse credit history; or

(3) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist.

(B) For purposes of paragraph (b)(1)(vii)(A) of this section, an adverse credit history means that as of the date of the credit report, the applicant–

(1) Is 90 or more days delinquent on any debt; or

(2) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(C) For the purposes of (b)(1)(vii)(A) of this section, the Secretary does not consider the absence of a credit history as an adverse credit history and does not deny a Direct PLUS loan on that basis.

(2) For purposes of paragraph (b)(1) of this section, a "parent" includes the individuals described in the definition of "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

(c) *Defaulted FFEL Program and Direct Loan borrowers.* Except as noted in Sec. 685.215(d)(1)(ii)(F), in the case of a student or parent borrower who is currently in default on an FFEL Program or a Direct Loan Program Loan, the borrower shall make satisfactory repayment arrangements, as described in paragraph (2) of the definition of that term under Sec. 685.102(b), on the defaulted loan.

(d) *Use of loan proceeds to replace expected family contribution.* The amount of a Direct Unsubsidized Loan, a Direct PLUS Loan, a State-sponsored loan, or another non-Federal loan obtained for a loan period may be used to replace the expected family contribution for that loan period.

(Authority: 20 U.S.C. 1087a et seq.)

Note: (b)(1) redesignated and (b)(2) added December 1, 1995, effective July 1, 1996. (a)(1)(i) and (c) revised June 12, 1996, effective July 12, 1996.

Sec. 685.201 Obtaining a loan.

(a) *Application for a Direct Subsidized Loan or a Direct Unsubsidized Loan.*

(1) To obtain a Direct Subsidized Loan or a Direct Unsubsidized Loan, a student shall complete a Free Application for Federal Student Aid and submit it in accordance with instructions in the application.

(2) If the student is eligible for a Direct Subsidized Loan or a Direct Unsubsidized Loan, the Secretary or the school in which the student is enrolled shall perform specific functions. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions:

(i) A school participating under school origination option 2 shall create a loan origination record, obtain a completed promissory note from the student, draw down funds, and disburse the funds.

(ii) A school participating under school origination option 1 shall create a loan origination record, obtain a completed promissory note from the student, and transmit the record and promissory note to the Servicer. The Servicer initiates the drawdown of funds, and the school disburses the funds.

(iii) If the student is attending a school participating under standard origination, the school shall create a loan origination record and transmit the record to the alternative originator, which prepares the promissory note and sends it to the student and receives the completed promissory note from the student. The Servicer initiates the drawdown of funds, and the school disburses the funds.

(b) *Application for a Direct PLUS Loan.* To obtain a Direct PLUS Loan, the parent shall complete the application and promissory note and submit it to the school at which the student is enrolled. The school shall complete its portion of the application and promissory note and submit it to the Servicer, which makes a determination as to whether the parent has an adverse credit history. Unless a school's agreement with the Secretary specifies otherwise, the school shall perform the following functions: A school participating under school origination option 2 shall draw down funds and disburse the funds. For a school participating under school origination option 1 or standard origination, the Servicer initiates the drawdown of funds, and the school disburses the funds.

(c) *Application for a Direct Consolidation Loan.* (1) To obtain a Direct Consolidation Loan, the applicant shall complete the application and promissory note and submit it to the Servicer. The application and promissory note set forth the terms and conditions of the Direct Consolidation Loan and inform the applicant how to contact the Servicer. The Servicer answers questions regarding the process of applying for a Direct Consolidation Loan and provides information about the terms and conditions of both Direct Consolidation Loans and the types of loans that may be consolidated.

(2) Once the applicant has submitted the completed application and promissory note to the Servicer, the Secretary makes the Direct Consolidation Loan under the procedures specified in Sec. 685.215.

(Authority: 20 U.S.C. 1087a et seq., 1091a)

Note: (a)(2) introductory text and (b) amended December 1, 1995, effective July 1, 1996.

Sec. 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest.* (1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans.*

(i) *Loans first disbursed prior to July 1, 1995.* For Direct Subsidized Loans and Direct Unsubsidized Loans during all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(ii) *Loans first disbursed on or after July 1, 1995.*

(A) During the in-school, grace, and deferment periods. The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(B) During all other periods. The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(2) *Interest rate for the Direct PLUS Loans.* The interest rate on a Direct PLUS Loan during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(b) *Capitalization.* (1) The Secretary may add unpaid accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) For a Direct Unsubsidized Loan or a Direct Unsubsidized Consolidation Loan that qualifies for a grace period, the Secretary capitalizes the unpaid interest that accrues on the loan when the borrower enters repayment.

(3) Notwithstanding Sec. 685.208(g)(5) and Sec. 685.209(d)(3), for a Direct Loan not eligible for interest subsidies during periods of deferment, and for all Direct Loans during periods of forbearance, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment or forbearance.

(4) Except as provided in paragraph (b)(3) of this section and in Sec. 685.208(g)(5), and Sec. 685.209(d)(3), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative or income contingent repayment plans and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

(5) The Secretary may capitalize unpaid interest when the borrower defaults on the loan.

(c) *Loan fee for Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans.* The Secretary–

(1) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan;

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a pro rated portion of the fee from each disbursement; and

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to any portion of the loan that is–

(i) Repaid or returned within 120 days of disbursement, unless–

(A) The borrower has no Direct Loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a Direct Loan in repayment status, in which case the payment is applied in accordance with Sec. 685.211(a) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan; or

(ii) Returned by a school in order to comply with the Act or with applicable regulations.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within 30 days after it is due.

(e)(1) *Collection charges before default.* Notwithstanding any provision of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or the Secretary's agents in collecting installments not paid when due. These charges do not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(2) *Collection charges after default.* If a borrower defaults on a Direct Loan, the Secretary assesses collection costs on the basis of 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a et seq., 1091a)

Note: (a)(1) and (b) revised June 12, 1996, effective July 12, 1996. (c)(4) revised November 28, 1997, effective July 1, 1998.

Sec. 685.203 Loan limits.

(a) *Direct Subsidized Loans.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $2,625 for a program of study of at least a full academic year in length.

(ii) $1,750 for a program of study of at least two-thirds but less than a full academic year in length.

(iii) $875 for a program of study of at least one-third but less than two- thirds of an academic year in length.

(2) In the case of an undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $3,500 for a program of study of at least a full academic year in length.

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, an amount that bears the same ratio to $3,500 as the number of semester, trimester, quarter, or clock hours for which the student enrolls bears to one academic year.

(3) In the case of an undergraduate student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program, or in the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed the following:

(i) $5,500 for a program of study of at least an academic year in length.

(ii) For a student enrolled in a program of study with less than a full academic year remaining, an amount that bears the same ratio to $5,500 as the number of semester, trimester, quarter, or clock hours for which the student enrolls bears to one academic year.

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford/Ford Loan Program in combination with the Federal Stafford Loan Program may not exceed $8,500.

(b) *Direct Unsubsidized Loans.* The total amount a student may borrow under any period of study for the Federal Direct Unsubsidized Loan Program and the Federal Unsubsidized Stafford/Ford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford/Ford Loan Program or the Federal Stafford Loan Program.

(c) *Additional eligibility for Direct Unsubsidized Loans.* (1)(i) An independent undergraduate student, graduate or professional student, and certain dependent undergraduate students may borrow amounts under the Federal Direct Unsubsidized Loan Program in addition to any amount borrowed under paragraph (b) of this section.

(ii) In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine that the student's parent likely will be precluded by exceptional circumstances from borrowing under the Federal Direct PLUS Program or the Federal PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. The financial aid administrator shall base the determination on a review of the family financial information provided by the student and consideration of the student's debt burden and shall document the determination in the school's file.

(iii) "Exceptional circumstances" under paragraph (c)(1)(ii) of this section include but are not limited to circumstances in which the student's parent receives only public assistance or disability benefits, the parent is incarcerated, the parent has an adverse credit history, or the parent's whereabouts are unknown. A parent's refusal to borrow a Federal PLUS Loan or Direct PLUS Loan does not constitute "exceptional circumstances."

(2) The additional amount that a student described in paragraph (c)(1)(i) of this section may borrow under the Federal Direct Unsubsidized Stafford/Ford Loan Program and the Federal Unsubsidized Stafford Loan Program for any academic year of study may not exceed the following:

(i) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education–

(A) $4,000 for enrollment in a program of study of at least a full academic year in length;

(B) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(C) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(ii) In the case of a student who has successfully completed the first and second year of an undergraduate program but has not completed the remainder of the program of study–

(A) For a student enrolled in a program of study of at least a full academic year, $5,000; and

(B) For a student enrolled in a program of study with less than a full academic year remaining, an amount that bears the same ratio to $5,000 as the number of semester, trimester, quarter, or clock hours for which the student enrolls bears to one academic year.

(iii) In the case of a graduate or professional student, $10,000.

(d) *Federal Direct Stafford/Ford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Direct Subsidized Loans and Federal Stafford Loans made to a student may not exceed the following:

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level.

(2) $65,500 in the case of a graduate or professional student, including loans for undergraduate study.

(e) *Aggregate limits for unsubsidized loans.* The total amount of Direct Unsubsidized Loans, Federal Unsubsidized Stafford Loans, and Federal SLS Loans may not exceed the following:

(1) For a dependent undergraduate student, $23,000 minus any Direct Subsidized Loan and Federal Stafford Loan amounts, unless the student qualifies under paragraph (c) of this section for additional eligibility or qualified for that additional eligibility under the Federal SLS Program.

(2) For an independent undergraduate or a dependent undergraduate who qualifies for additional eligibility under paragraph (c) of this section or qualified for this additional eligibility under the Federal SLS Program, $46,000 minus any Direct Subsidized Loan and Federal Stafford Loan amounts.

(3) For a graduate or professional student, $138,500 including any loans for undergraduate study, minus any Direct Subsidized Loan, Federal Stafford Loan, and Federal SLS Program loan amounts.

(f) *Direct PLUS Loans annual limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of attendance minus other estimated financial assistance for that student.

(g) *Direct PLUS Loans aggregate limit.* The total amount of all Direct PLUS Loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of attendance minus other estimated financial assistance for that student for the entire period of enrollment.

(h) *Loan limit period.* The annual loan limits apply to an academic year.

(i) *Treatment of Direct Consolidation Loans and Federal Consolidation Loans.* The percentage of the outstanding balance on Direct Consolidation Loans or Federal Consolidation Loans counted against a borrower's aggregate loan limits is calculated as follows:

(1) For Direct Subsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Subsidized and Federal Stafford Loans.

(2) For Direct Unsubsidized Loans, the percentage equals the percentage of the original amount of the Direct Consolidation Loan or Federal Consolidation Loan attributable to the Direct Unsubsidized, Federal SLS, and Federal Unsubsidized Stafford Loans.

(j) *Maximum loan amounts.* In no case may a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less–

(1) The student's estimated financial assistance for that period; and

(2) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.204 Deferment.

(a)(1) A Direct Loan borrower whose loan is eligible for interest subsidies and who meets the requirements described in paragraph (b) of this section is eligible for a deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Loan borrower whose loan is not eligible for interest subsidies and who meets the requirements described in paragraph (b) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower.

(b) Except as provided in paragraphs (d) and (e) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1)(i) The borrower–

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(C) Is pursuing a rehabilitation training program, approved by the Secretary, for individuals with disabilities; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(2)(i) The borrower is seeking and unable to find full-time employment.

(ii) For purposes of paragraph (b)(2)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to the inability to find full-time employment using the standards and procedures set forth in 34 CFR 682.210(h) with references to the lender understood to mean the Secretary.

(3)(i) The borrower has experienced or will experience an economic hardship.

(ii) For purposes of paragraph (b)(3)(i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s)(6) with references to the lender understood to mean the Secretary.

(c) No deferment under paragraphs (b) (2) or (3) of this section may exceed three years.

(d) If, at the time of application for a borrower's first Direct Loan, a borrower has an outstanding balance of principal or interest owing on any FFEL Program loan that was made, insured, or guaranteed prior to July 1, 1993, the borrower is eligible for a deferment during--

(1) the periods described in paragraph (b) of this section; and

(2) the periods described in 34 CFR 682.210(b), including those periods that apply to a "new borrower" as that term is defined in 34 CFR 682.210(b)(7).

(e) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(Authority: 20 U.S.C. 1087a et seq.)

(Approved by the Office of Management and Budget under control number 1840-0672)

Note: OMB control number added June 28, 1995, effective July 1, 1995.

Note: (b) and (d) revised and (e) added June 12, 1996, effective July 12, 1996.

Sec. 685.205 Forbearance.

(a) *General.* "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. The borrower has the option to choose the form of forbearance. If payments of interest are forborne, they are capitalized. The Secretary grants forbearance if the borrower or endorser intends to repay the loan but requests forbearance and provides sufficient documentation to support this request, and--

(1) The Secretary determines that, due to poor health or other acceptable reasons, the borrower or endorser is currently unable to make scheduled payments;

(2) The borrower's payments of principal are deferred under Sec. 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower.

(3) The borrower is in a medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service, or the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(4) The borrower is serving in a national service position for which the borrower is receiving a national service educational award under the National and Community Service Trust Act of 1993;

(5) The borrower is eligible for loan forgiveness under the Federal Stafford Loan Forgiveness Demonstration Program, if the program is funded, for performing the type of service described in Sec. 682.215(b); or

(6) For not more than three years during which the borrower or endorser--

(i) Is currently obligated to make payments on loans under title IV of the Act; and

(ii) The sum of these payments each month (or a proportional share if the payments are due less frequently than monthly) is equal to or greater than 20 percent of the borrower's or endorser's total monthly gross income.

(b) *Administrative forbearance.* In certain circumstances, the Secretary grants forbearance without requiring documentation from the borrower. These circumstances include but are not limited to--

(1) A properly granted period of deferment for which the Secretary learns the borrower did not qualify;

(2) The period for which payments are overdue at the beginning of an authorized deferment period;

(3) The period beginning when the borrower entered repayment until the first payment due date was established;

(4) The period prior to a borrower's filing of a bankruptcy petition;

(5) A period after the Secretary receives reliable information indicating that the borrower (or the student in the case of a Direct PLUS Loan) has died, or the borrower has become totally and permanently disabled, until the Secretary receives documentation of death or total and permanent disability;

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge--

(i) Under Sec. 685.213;

(ii) Under Sec. 685.214; or

(iii) Due to the borrower's or endorser's (if applicable) bankruptcy;

(7) A period of up to three years in cases where the effect of a variable interest rate on a fixed-amount or graduated

repayment schedule causes the extension of the maximum repayment term; or

(8) A period during which the Secretary has authorized forbearance due to a national military mobilization or other local or national emergency.

(c) *Period of forbearance.* (1) The Secretary grants forbearance for a period of up to one year.

(2) The forbearance is renewable, upon request of the borrower, for the duration of the period in which the borrower meets the condition required for the forbearance.

(Authority: 20 U.S.C. 1087a et seq.)

Note: (a)(4) revised June 12, 1996, effective July 12, 1996.

Sec. 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

(1) A statement, as described in 34 CFR Part 668, that the loan will be used for the cost of the student's attendance.

(2) Information demonstrating that the borrower is eligible for the loan.

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.

(4) A statement authorizing the school to release to the Secretary information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b)(1) The borrower shall promptly notify the Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The borrower shall promptly notify the school of any change in address during enrollment.

(c) *Borrower defenses.* (1) In any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. These proceedings include, but are not limited to, the following:

(i) Tax refund offset proceedings under 34 CFR 30.33.

(ii) Wage garnishment proceedings under section 488A of the Act.

(iii) Salary offset proceedings for Federal employees under 34 CFR Part 31.

(iv) Credit bureau reporting proceedings under 31 U.S.C. 3711(f).

(2) If the borrower's defense against repayment is successful, the Secretary notifies the borrower that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay. The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include, but is not limited to, the following:

(i) Reimbursing the borrower for amounts paid toward the loan voluntarily or through enforced collection.

(ii) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(iii) Updating reports to credit bureaus to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

(3) The Secretary may initiate an appropriate proceeding to require the school whose act or omission resulted in the borrower's successful defense against repayment of a Direct Loan to pay to the Secretary the amount of the loan to which the defense applies. However, the Secretary does not initiate such a proceeding after the period for the retention of records described in Sec. 685.309(c) unless the school received actual notice of the claim during that period.

(Authority: 20 U.S.C. 1087a et seq.)

(Approved by the Office of Management and Budget under control number 1840-0672)

Note: OMB control number added June 28, 1995, effective July 1, 1995.

Sec. 685.207 Obligation to repay.

(a) *Obligation of repayment in general.* (1) A borrower is obligated to repay the full amount of a Direct Loan, including the principal balance, fees, any collection costs charged under Sec. 685.202(e), and any interest not subsidized by the Secretary, unless the borrower is relieved of the obligation to repay as provided in this part.

(2) The borrower's repayment of a Direct Loan may also be subject to the deferment provisions in Sec. 685.204, the forbearance provisions in Sec. 685.205, and the discharge provisions in Sec. 685.212.

(b) *Direct Subsidized Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments on a Direct Subsidized Loan unless–

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under Sec. 685.204.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make payments on a Direct Subsidized Loan.

(3) A borrower is not obligated to pay interest on a Direct Subsidized Loan for in-school or grace periods unless the borrower is required to make payments on the loan during those periods under paragraph (b)(1) of this section.

(4) The repayment period for a Direct Subsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(c) *Direct Unsubsidized Loan repayment.* (1) During the period in which a borrower is enrolled at an eligible school on at least a half-time basis, the borrower is in an "in-school" period and is not required to make payments of principal on a Direct Unsubsidized Loan unless–

(i) The loan entered repayment before the in-school period began; and

(ii) The borrower has not been granted a deferment under Sec. 685.204.

(2)(i) When a borrower ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins, unless the grace period has been previously exhausted.

(ii) During a grace period, the borrower is not required to make any principal payments on a Direct Unsubsidized Loan.

(3) A borrower is responsible for the interest that accrues on a Direct Unsubsidized Loan during in-school and grace periods. Interest begins to accrue on the day the first installment is disbursed. Interest that accrues may be capitalized or paid by the borrower.

(4) The repayment period for a Direct Unsubsidized Loan begins the day after the grace period ends. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(d) *Direct PLUS Loan repayment.* The repayment period for a Direct PLUS Loan begins on the day the loan is fully disbursed. Interest begins to accrue on the day the first installment is disbursed. A borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(e) *Direct Consolidation Loan repayment.* (1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, the repayment period for a Direct Consolidation Loan begins and interest begins to accrue on the day the loan is made. The borrower is obligated to repay the loan under paragraph (a) of this section during the repayment period.

(2) A borrower who obtains a Direct Subsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (b) of this section.

(3) A borrower who obtains a Direct Unsubsidized Consolidation Loan during an in-school period will be subject to the repayment provisions in paragraph (c) of this section.

(f) *Determining the date on which the grace period begins for a borrower in a correspondence program.* For a borrower of a Direct Subsidized or Direct Unsubsidized Loan who is a correspondence student, the grace period begins on the earliest of the date–

(1) The borrower completes the program;

(2) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in Sec. 685.302. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(3) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under Sec. 685.302.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.208 Repayment plans.

(a) *General.* (1) A borrower may repay a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Subsidized Consolidation Loan, or a Direct Unsubsidized Consolidation Loan under the standard repayment plan, the extended repayment plan, the graduated repayment plan, or the income contingent repayment plan.

(2) A borrower may repay a Direct PLUS Loan or a Direct PLUS Consolidation Loan under the standard repayment plan, the extended repayment plan, or the graduated repayment plan.

(3) The Secretary may provide an alternative repayment plan in accordance with paragraph (g) of this section.

(4) All Direct Loans obtained by one borrower must be repaid together under the same repayment plan, except that a borrower of a Direct PLUS Loan or a Direct PLUS Consolidation Loan may repay the Direct PLUS Loan or the Direct PLUS Consolidation Loan separately from other Direct Loans obtained by that borrower.

(b) *Standard repayment plan.* (1) Under the standard repayment plan, a borrower shall repay a loan in full within ten years from the date the loan entered repayment by making fixed monthly payments.

(2) Periods of authorized deferment or forbearance are not included in the ten-year repayment period.

(3) A borrower's payments under the standard repayment plan are at least $50 per month, except that a borrower's final payment may be less than $50.

(4) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in Sec. 685.202(a).

(c) *Extended repayment plan.* (1) Under the extended repayment plan, a borrower shall repay a loan in full by making fixed monthly payments within an extended period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) Periods of deferment and forbearance are not included in the number of years of repayment.

(3) A borrower makes fixed monthly payments of at least $50, except that a borrower's final payment may be less than $50.

(4) The number of payments or the fixed monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in Sec. 685.202(a).

(d) *Graduated repayment plan.* (1) Under the graduated repayment plan, a borrower shall repay a loan in full by making payments at two or more levels within a period of time that varies with the total amount of the borrower's loans, as described in paragraph (e) of this section.

(2) Periods of deferment and forbearance are not included in the number of years of repayment.

(3) The number of payments or the monthly repayment amount may be adjusted to reflect changes in the variable interest rate identified in Sec. 685.202(a).

(4) No scheduled payment under the graduated repayment plan may be less than the amount of interest accrued on the loan between monthly payments, less than 50 percent of the payment amount that would be required under the standard repayment plan, or more than 150 percent of the payment amount that would be required under the standard repayment plan.

(e) *Repayment period for the extended and graduated plans.* Under the extended and graduated repayment plans, if the total amount of the borrower's Direct Loans is--

(1) Less than $10,000, the borrower shall repay the loans within 12 years of entering repayment;

(2) Greater than or equal to $10,000 but less than $20,000, the borrower shall repay the loans within 15 years of entering repayment;

(3) Greater than or equal to $20,000 but less than $40,000, the borrower shall repay the loans within 20 years of entering repayment;

(4) Greater than or equal to $40,000 but less than $60,000, the borrower shall repay the loans within 25 years of entering repayment; and

(5) Greater than or equal to $60,000, the borrower shall repay the loans within 30 years of entering repayment.

(f) *Income contingent repayment plan.* (1) Under the income contingent repayment plan, a borrower's monthly repayment amount is generally based on the total amount of the borrower's Direct Loans, family size, and Adjusted Gross Income (AGI) reported by the borrower for the most recent year for which the Secretary has obtained income information. The borrower's AGI includes the income of the borrower's spouse. A borrower shall make payments on a loan until the loan is repaid in full or until the loan has been in repayment through the end of the income contingent repayment period.

(2) The regulations in effect at the time a borrower enters repayment and selects the income contingent repayment plan or changes into the income contingent repayment plan from another plan govern the method for determining the borrowers's monthly repayment amount for all of the borrower's Direct Loans, unless–

(i) The Secretary amends the regulations relating to a borrower's monthly repayment amount under the income contingent repayment plan; and

(ii) The borrower submits a written request that the amended regulations apply to the repayment of the borrower's Direct Loans.

(3) Provisions governing the income contingent repayment plan are set out in Sec. 685.209.

(g) *Alternative repayment*. (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (f) of this section are not adequate to accommodate the borrower's exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) A borrower shall repay a loan under an alternative repayment plan within 30 years of the date the loan entered repayment, not including periods of deferment and forbearance.

(5) If the amount of a borrower's monthly payment under an alternative repayment plan is less than the accrued interest on the loan, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original principal amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original principal amount is the amount owed by the borrower when the borrower enters repayment.

(Authority: 20 U.S.C. 1087a et seq.)

Note: (f)(1) and (2) revised June 19, 1996, effective July 1, 1996. (f)(2) revised May 9, 1997, effective July 1, 1996.

Sec. 685.209 Income contingent repayment plan.

(a) *Repayment amount calculation*. (1) The amount the borrower would repay is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment, and this basis for calculation does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (b)(2) of this section. If the borrower obtains another Direct Loan, the amount the borrower would repay is based on the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the amount the borrowers would repay is based on both borrowers' Direct Loan debts at the time they enter joint repayment.

(2) The annual amount payable under the income contingent repayment plan by a borrower is the lesser of–

(i) The amount the borrower would repay annually over 12 years using standard amortization multiplied by an income percentage factor that corresponds to the borrower's adjusted gross income (AGI) as shown in the income percentage factor table in Appendix A to this part; or

(ii) 20 percent of discretionary income.

(3) For purposes of this section, discretionary income is defined as a borrower's AGI minus the amount of the "HHS Poverty Guidelines for all States (except Alaska and Hawaii) and the District of Columbia" as published by the United States Department of Health and Human Services on an annual basis.[1] For residents of Alaska and Hawaii, discretionary income is defined as a borrower's AGI minus the amounts in the "HHS Poverty Guidelines for Alaska" and the "HHS Poverty Guidelines for Hawaii" respectively. If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guidelines for the borrower's family size.

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[1] The HHS Poverty Guidelines are available from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Room 438F, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

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(4) For exact incomes not shown in the income percentage factor table in Appendix A, an income percentage factor is calculated, based upon the intervals between the incomes and income percentage factors shown on the table.

(5) Each year, the Secretary recalculates the borrower's annual payment amount based on changes in the borrower's AGI, the variable interest rate, the income percentage factors in the table in Appendix A, and updated HHS Poverty Guidelines (if applicable).

(6) If a borrower's monthly payment is calculated to be greater than $0 but less than or equal to $5.00, the amount payable by the borrower shall be $5.00.

(7) For purposes of the annual recalculation described in paragraph (a)(5) of this section, after periods in which a borrower makes payments that are less than interest accrued on the loan, the payment amount is recalculated based upon unpaid accrued interest and the highest outstanding principal loan amount (including amount capitalized) calculated for that borrower while paying under the income contingent repayment plan.

(8) For each calendar year after calendar year 1996, the Secretary publishes in the Federal Register a revised income percentage factor table reflecting changes based on inflation. This revised table is developed by changing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage changes in the Consumer Price Index (as determined by the Secretary) between December 1995 and the December next preceding the beginning of such calendar year.

(9) Examples of the calculation of monthly repayment amounts and tables that show monthly repayment amounts for borrowers at various income and debt levels are included in Appendix A to this part.

(b) *Treatment of married borrowers.* (1) A married borrower who wishes to repay under the income contingent repayment plan and who has filed an income tax return separately from his or her spouse must provide his or her spouse's written consent to the disclosure of certain tax return information under paragraph (c)(5) of this section (unless the borrower is separated from his or her spouse). The AGI for both spouses is used to calculate the monthly repayment amount.

(2) Married borrowers may repay their loans jointly. The outstanding balances on the loans of each borrower are added together to determine the borrowers' payback rate under (a)(1) of this section.

(3) The amount of the payment applied to each borrower's debt is the proportion of the payments that equals the same proportion as that borrower's debt to the total outstanding balance, except that the payment is credited toward outstanding interest on any loan before any payment is credited toward principal.

(c) *Other features of the income contingent repayment plan.* (1) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(2) *First and second year borrowers.* The Secretary requires alternative documentation of income from borrowers in their first and second years of repayment, when in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income.

(3) *Adjustments to repayment obligations.* The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(4) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period includes periods in which the borrower makes payments under the standard repayment plan and under extended repayment plans in which payments are based on a repayment period that is up to 12 years. The repayment period does not include periods in which the borrower makes payments under the graduated and alternative repayment plans or periods of authorized deferment or forbearance. The repayment period also does not include periods in which the borrower makes payments under an extended repayment plan in which payments are based on a repayment period that is longer than 12 years.

(iii) If a borrower repays more than one loan under the income contingent repayment plan, a separate repayment period for each loan begins when that loan enters repayment.

(iv) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the income contingent repayment plan, the Secretary cancels the unpaid portion of the loan.

(v) At the beginning of the repayment period under the income contingent repayment plan, a borrower shall make monthly payments of the amount of interest that accrues on the borrower's Direct Loans until the Secretary calculates the borrower's monthly repayment amount on the basis of the borrower's income.

(5) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the

accrued interest, the unpaid interest is capitalized until the outstanding principal amount is ten percent greater than the original principal amount. After the outstanding principal amount is ten percent greater than the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

(6) *Notification of terms and conditions.* When a borrower elects or is required by the Secretary to repay a loan under the income contingent repayment plan, the Secretary notifies the borrower of the terms and conditions of the plan, including--

(i) That the Internal Revenue Service will disclose certain tax return information to the Secretary or the Secretary's agents; and

(ii) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in Sec. 685.209(c)(3), the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate.

(7) *Consent to disclosure of tax return information.* (i) A borrower shall provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the income contingent repayment plan. The borrower shall provide consent by signing a consent form, developed consistent with 26 CFR 301.6103(c)-1 and provided to the borrower by the Secretary, and shall return the signed form to the Secretary.

(ii) The borrower shall consent to disclosure of the borrower's taxpayer identity information as defined in 26 U.S.C. 6103(b)(6), tax filing status, and AGI.

(iii) The borrower shall provide consent for a period of five years from the date the borrower signs the consent form. The Secretary provides the borrower a new consent form before that period expires. The IRS does not disclose tax return information after the IRS has processed a borrower's withdrawal of consent.

(iv) The Secretary designates the standard repayment plan for a borrower who selects the income contingent repayment plan but--

(A) Fails to provide the required written consent;

(B) Fails to renew written consent upon the expiration of the five-year period for consent; or

(C) Withdraws consent and does not select another repayment plan.

(v) If a borrower defaults and the Secretary designates the income contingent repayment plan for the borrower but the borrower fails to provide the required written consent, the Secretary mails a notice to the borrower establishing a repayment schedule for the borrower.

(Authority: 20 U.S.C. 1087a et seq.)

(Approved by the Office of Management and Budget under control number 1840-0672)

Note: OMB control number added June 28, 1995, effective July 1, 1995. (a) and (b) amended; (c) removed; (d) redesignated as (c); new (c)(2) through (5) redesignated as (c)(4) through (7), respectively; (c)(2) and (c)(3) added December 1, 1995, effective July 1, 1996. Note: (a)(6) through (8) redesignated (a)(7) through (9) and new (a)(6) added; (c)(6)(ii) revised June 19. 1996, effective July 1, 1996.

Sec. 685.210 Choice of repayment plan.

(a) *Initial selection of a repayment plan.* (1) Before a Direct Loan enters into repayment, the Secretary provides the borrower a description of the available repayment plans and requests the borrower to select one. A borrower may select a repayment plan before the loan enters repayment by notifying the Secretary of the borrower's selection in writing.

(2) If a borrower does not select a repayment plan, the Secretary designates the standard repayment plan described in Sec. 685.208(b) for the borrower.

(b) *Changing repayment plans.* (1) A borrower may change repayment plans at any time after the loan has entered repayment by notifying the Secretary. However, a borrower who is repaying a defaulted loan under the income contingent repayment plan under Sec. 685.211(c)(3)(ii) may not change to another repayment plan unless--

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior three (3) months; or

(ii) The borrower was not required to make payments but made three reasonable and affordable payments in each of the prior three months; and

(iii) The borrower makes and the Secretary approves a request to change plans.

(2)(i) A borrower may not change to a repayment plan that has a maximum repayment period of less than the number of years the loan has already been in repayment, except that a borrower may change to the income contingent repayment plan at any time.

(ii) If a borrower changes plans, the repayment period is the period provided under the borrower's new repayment plan, calculated from the date the loan initially entered repayment. However, if a borrower changes to the income contingent repayment plan, the repayment period is calculated as described in Sec. 685.209(d)(2).

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.211 Miscellaneous repayment provisions.

(a) *Payment application and prepayment.* (1) The Secretary applies any payment first to any accrued charges and collection costs, then to any outstanding interest, and then to outstanding principal.

(2) A borrower may prepay all or part of a loan at any time without penalty. If a borrower pays any amount in excess of the amount due, the excess amount is a prepayment.

(3) If a prepayment equals or exceeds the monthly repayment amount under the borrower's repayment plan, the Secretary--

(i) Applies the prepaid amount according to paragraph (a)(1) of this section;

(ii) Advances the due date of the next payment unless the borrower requests otherwise; and

(iii) Notifies the borrower of any revised due date for the next payment.

(4) If a prepayment is less than the monthly repayment amount, the Secretary applies the prepayment according to paragraph (a)(1) of this section.

(b) *Refunds from schools.* The Secretary applies any refund due to a borrower that the Secretary receives from a school under Sec. 668.22 against the borrower's outstanding principal and notifies the borrower of the refund.

(c) *Default.* (1) *Acceleration.* If a borrower defaults on a Direct Loan, the entire unpaid balance and accrued interest are immediately due and payable.

(2) *Collection charges.* If a borrower defaults on a Direct Loan, the Secretary assesses collection charges in accordance with Sec. 685.202(e).

(3) *Collection of a defaulted loan.* (i) The Secretary may take any action authorized by law to collect a defaulted Direct Loan including, but not limited to, filing a lawsuit against the borrower, reporting the default to national credit bureaus, requesting the Internal Revenue Service to offset the borrower's Federal income tax refund, and garnishing the borrower's wages.

(ii) If a borrower defaults on a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct Unsubsidized Consolidation Loan or a Direct Subsidized Consolidation Loan, the Secretary may designate the income contingent repayment plan for the borrower.

(d) *Ineligible borrowers.* (1) The Secretary determines that a borrower is ineligible if, at the time the loan was made and without the school's or the Secretary's knowledge, the borrower (or the student on whose behalf a parent borrowed) provided false or erroneous information or took actions that caused the borrower or student--

(i) To receive a loan for which the borrower is wholly or partially ineligible;

(ii) To receive interest benefits for which the borrower was ineligible; or

(iii) To receive loan proceeds for a period of enrollment for which the borrower was not eligible.

(2) If the Secretary makes the determination described in paragraph (d)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. The demand letter requires that within 30 days from the date the letter is mailed, the borrower repay any principal amount for which the borrower is ineligible and any accrued interest, including interest subsidized by the Secretary, through the previous quarter.

(3) If a borrower fails to comply with the demand letter described in paragraph (d)(2) of this section, the borrower is in default on the entire loan.

(4) A borrower may not consolidate a loan under Sec. 685.215 for which the borrower is wholly or partially ineligible.

(e) *Rehabilitation of defaulted loans.* A defaulted Direct Loan is rehabilitated if the borrower makes 12 consecutive on-time, reasonable, and affordable monthly payments. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.212 Discharge of a loan obligation.

(a) *Death.* If the Secretary receives acceptable documentation that a borrower (or the student on whose behalf a parent borrowed) has died, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(b) *Total and permanent disability.* (1) If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(2) Except as provided in paragraph (b)(3)(i) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(3)(i) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (b) (1) and (2) of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(ii) For the purposes of discharging a loan under paragraph (b)(3)(i) of this section, provisions in paragraphs (b) (1) and (2) of this section apply to each loan included in the Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(iii) If requested, a borrower seeking to discharge a loan obligation under paragraph (b)(3)(i) of this section must provide the Secretary with the disbursement dates of the underlying loans.

(c) *Bankruptcy.* If a borrower's obligation to repay a loan is discharged in bankruptcy, the Secretary does not require the borrower to make any further payments on the loan.

(d) *Closed schools.* If a borrower meets the requirements in Sec. 685.213, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(e) *False certification and unauthorized disbursement.* If a borrower meets the requirements in Sec. 685.214, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(f) *Payments received after eligibility for discharge.* Upon receipt of acceptable documentation and approval of the discharge request, the Secretary returns to the sender, or, for a discharge based on death, the borrower's estate, those payments received after the date that the eligibility requirements for discharge were met but prior to the date the discharge was approved. The Secretary also returns any payments received after the date the discharge was approved.

(g) *Loan forgiveness demonstration program.* If funds are appropriated for the loan forgiveness demonstration program authorized by section 428J of the Act, the Secretary follows the procedures and applies the standards in 34 CFR 682.215 for borrowers under the Direct Loan Program.

(Authority: 20 U.S.C. 1087a et seq.)

(f) revised June 12, 1996, effective July 12, 1996. (c) revised June 3, 1997, effective June 3, 1997. (b) revised November 28, 1997, effective July 1, 1998.

Sec. 685.213 Closed school discharge.

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section--

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; and

(ii) "School" means a school's main campus or any location or branch of the main campus.

(b) *Relief pursuant to discharge.* (1) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs with respect to the loan.

(2) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(3) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(4) The Secretary reports the discharge of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under this section, a borrower shall submit to the Secretary a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall--

(1) State that the borrower (or the student on whose behalf a parent borrowed)--

(i) Received the proceeds of a loan to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(iii) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(2) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(3) State that the borrower (or student)--

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a discharge under this section, a borrower shall cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower shall--

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who--

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the

borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a et seq.)

(Approved by the Office of Management and Budget under control number 1840-0672)

Note: OMB control number added June 28, 1995, effective July 1, 1995.

Sec. 685.214 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge.* (1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school--

(i) Certified the student's eligibility for a Direct Loan on the basis of ability to benefit from its training and the student did not meet the eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable;

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization; or

(iii) Certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet the requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended.

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.* (1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge under this section, the borrower shall submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower shall meet the requirements in paragraphs (c) (1) through (5) of this section

(1) *Ability to benefit.* In the case of a borrower requesting a discharge based on the school's defective testing of the student's ability to benefit, the borrower shall state that the borrower (or the student on whose behalf a parent borrowed)--

(i) Received a disbursement of a loan to attend a school;

500

(ii) Received a Direct Loan at that school on the basis of an ability to benefit from the school's training and did not meet the eligibility requirements described in 34 CFR Part 668 and section 484(d) of the Act, as applicable; and

(iii) Either--

(A) Withdrew from the school and did not find employment in the occupation for which the training program was intended; or

(B) Completed the training program for which the loan was made, made reasonable attempts to obtain employment in the occupation for which the program was intended, and was not able to find employment in that occupation or obtained employment in that occupation only after receiving additional training that was not provided by the school that originated the loan.

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower shall--

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower shall--

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Claim to third party.* The borrower shall state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(5) *Cooperation with Secretary.* The borrower shall state that the borrower (or student)--

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in Sec. 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in Sec. 685.213(e).

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(Authority: 20 U.S.C. 1087a et seq.)

(Approved by the Office of Management and Budget under control number 1840-0672)

Note: OMB control number added June 28, 1995, effective July 1, 1995.

Note: (a)(1)(iii) and (c)(1)(iii)(B) revised June 12, 1996, effective July 12, 1996.

Sec. 685.215 Consolidation

(a) *Direct Consolidation Loans*. A borrower may consolidate one or more education loans made under certain Federal programs into one or more Direct Consolidation Loans. Loans consolidated into a Direct Consolidation Loan are discharged when the Direct Consolidation Loan is originated.

(b) *Loans eligible for consolidation*. The following loans may be consolidated into a Direct Consolidation Loan:

(1) Federal Stafford Loans.
(2) Guaranteed Student Loans.
(3) Federal Insured Student Loans (FISL).
(4) Direct Subsidized Loans.
(5) Direct Subsidized Consolidation Loans.
(6) Federal Perkins Loans.
(7) National Direct Student Loans (NDSL).
(8) National Defense Student Loans (NDSL).
(9) Federal PLUS Loans.
(10) Parent Loans for Undergraduate Students (PLUS).
(11) Direct PLUS Loans.
(12) Direct PLUS Consolidation Loans.
(13) Federal Unsubsidized Stafford Loans.
(14) Federal Supplemental Loans for Students (SLS).
(15) Federal Consolidation Loans.
(16) Direct Unsubsidized Loans.
(17) Direct Unsubsidized Consolidation Loans.
(18) Auxiliary Loans to Assist Students (ALAS).
(19) Health Professions Student Loans (HPSL) and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act.
(20) Health Education Assistance Loans (HEAL).
(21) Nursing loans made under subpart II of part B of title VIII of the Public Health Service Act.

(c) *Types of Direct Consolidation Loans*. (1) The loans identified in paragraphs (b)(1) through (8) of this section may be consolidated into a Direct Subsidized Consolidation Loan.

(2) The loans identified in paragraphs (b)(9) through (12) of this section may be consolidated into a Direct PLUS Consolidation Loan.

(3) The loans identified in paragraphs (b)(13) through (21) of this section may be consolidated into a Direct Unsubsidized Consolidation Loan. In addition, Federal Consolidation Loans under (b)(15) of this section may be consolidated into a Direct Subsidized Consolidation Loan, if they are eligible for interest benefits during a deferment period under Section 428C(b)(4)(C) of the Act.

(d) *Eligibility for a Direct Consolidation Loan*. (1) A borrower may obtain a Direct Consolidation Loan if, at the time the borrower applies for such a loan, the borrower meets the following requirements:

(i) The borrower either--

(A) Has an outstanding balance on a Direct Loan; or

(B) Has an outstanding balance on an FFEL loan and asserts either--

(1) That the borrower is unable to obtain an FFEL consolidation loan; or

(2) That the borrower is unable to obtain an FFEL consolidation loan with income-sensitive repayment terms acceptable to the borrower and is eligible for the income contingent repayment plan under the Direct Loan Program.

(ii) On the loans being consolidated, the borrower is--

(A) In an in-school period and seeks to consolidate loans made under both the FFEL Program and the Direct Loan Program;

(B) In an in-school period at a school participating in the Direct Loan Program and seeks to consolidate loans made under the FFEL Program;

(C) In a six-month grace period;

(D) In a repayment period but not in default;

(E) In default but has made satisfactory repayment arrangements, as defined in paragraph (2) of that term under Sec. 685.102(b), on the defaulted loan; or

(F) In default but agrees to repay the consolidation loan under the income contingent repayment plan described in Sec. 685.208(f) and signs the consent form described in Sec. 685.209(d)(5).

(iii) The borrower certifies that no other application to consolidate any of the borrower's loans listed in paragraph (b) of this section is pending with any other lender.

(iv) The borrower agrees to notify the Secretary of any change in address.

(v) In the case of a Direct PLUS Consolidation Loan--

(A) The borrower may not have an adverse credit history as defined in Sec. 685.200(b)(7)(ii); or

(B) If the borrower has such an adverse credit history, the borrower shall obtain an endorser for the consolidation loan who does not have an adverse credit history or provide documentation satisfactory to the Secretary that extenuating circumstances relating to the borrower's credit history exist.

(vi) In the case of a defaulted Direct Consolidation Loan, the borrower obtains the approval of the Secretary.

(vii) In the case of a loan on which the holder has obtained a judgment, the borrower obtains the approval of the Secretary.

(2) Two married borrowers may consolidate their loans together if they meet the following requirements:

(i) At least one spouse meets the requirements of paragraphs (d)(1)(i) and (d)(1)(v) of this section.

(ii) Both spouses meet the requirements of paragraphs (d)(1) (ii) through (d)(1)(iv) of this section.

(iii) Each spouse agrees to be held jointly and severally liable for the repayment of the total amount of the consolidation loan and to repay the loan regardless of any change in marital status.

(e) *Application for a Direct Consolidation Loan.* To obtain a Direct Consolidation Loan, a borrower or borrowers shall submit a completed application to the Secretary. A single application may be used for one or more consolidation loans. A borrower may add eligible loans to a Direct Consolidation Loan by submitting a request to the Secretary within 180 days after the date on which the Direct Consolidation Loan is originated.

(f) *Origination of a consolidation loan.* (1)(i) The holder of a loan that a borrower wishes to consolidate into a Direct Loan shall complete and return the Secretary's request for certification of the amount owed within 10 business days of receipt or, if it is unable to provide the certification, provide to the Secretary a written explanation of the reasons for its inability to provide the certification.

(ii) If the Secretary approves an application for a consolidation loan, the Secretary pays to each holder of a loan selected for consolidation the amount necessary to discharge the loan.

(iii) For a Direct Loan or FFEL Program loan that is in default, the Secretary limits collection costs that may be charged to the borrower to no more than those authorized under the FFEL Program and may impose reasonable limits on collection costs paid to the holder.

(2) Upon receipt of the proceeds of a Direct Consolidation Loan, the holder of a consolidated loan shall promptly apply the proceeds to fully discharge the borrower's obligation on the consolidated loan. The holder of a consolidated loan shall notify the borrower that the loan has been paid in full.

(3) The principal balance of a Direct Consolidation Loan is equal to the sum of the amounts paid to the holders of the consolidated loans.

(4) If the amount paid by the Secretary to the holder of a consolidated loan exceeds the amount needed to discharge that loan, the holder of the consolidated loan shall promptly refund the excess amount to the Secretary to be credited against the outstanding balance of the Direct Consolidation Loan.

(5) If the amount paid by the Secretary to the holder of the consolidated loan is insufficient to discharge that loan, the holder shall notify the Secretary in writing of the remaining amount due on the loan. The Secretary promptly pays the remaining amount due.

(g) *Interest rate.* The interest rate on a Direct Subsidized Consolidation Loan or a Direct Unsubsidized Consolidation Loan is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans under Sec. 685.202(a)(1). The interest rate on a Direct PLUS Consolidation Loan is the rate established for Direct PLUS Loans under Sec. 685.202(a)(2).

(h) *Repayment plans.* A borrower may repay a Direct Consolidation Loan under any of the repayment plans described in Sec. 685.208, except that--

(1) A borrower may not repay a Direct PLUS Consolidation Loan under the income contingent repayment plan; and

(2) A borrower who became eligible to consolidate a defaulted loan under paragraph (d)(1)(ii)(E) of this section shall repay the consolidation loan under the income contingent repayment plan unless--

(i) The borrower was required to and did make a payment under the income contingent repayment plan in each of the prior three (3) months; or

(ii) The borrower was not required to make payments but made three reasonable and affordable payments in each of the prior three (3) months; and

(iii) The borrower makes and the Secretary approves a request to change plans.

(i) *Repayment period.* (1) Except as noted in paragraph (i)(4) of this section, the repayment period for a

Direct Consolidation Loan begins on the day the loan is disbursed.

(2) Under the extended or graduated repayment plan, the Secretary determines the repayment period under Sec. 685.208(e) on the basis of the outstanding balances on all of the borrower's loans that are eligible for consolidation and the balances on other education loans except as provided in paragraph (i)(3) of this section.

(3)(i) The total amount of outstanding balances on the other education loans used to determine the repayment period under the graduated or extended repayment plan may not exceed the amount of the Direct Consolidation Loan.

(ii) The borrower may not be in default on the other education loan unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(iii) The lender of the other educational loan may not be an individual.

(4) A Direct Consolidation Loan receives a grace period if it includes a Direct Loan or FFEL Program loan for which the borrower is in an in-school period at the time of consolidation. The repayment period begins the day after the grace period ends.

(j) *Repayment schedule*. (1) The Secretary provides a borrower of a Direct Consolidation Loan a repayment schedule before the borrower's first payment is due. The repayment schedule identifies the borrower's monthly repayment amount under the repayment plan selected.

(2) If a borrower adds an eligible loan to the consolidation loan under paragraph (e) of this section, the Secretary makes appropriate adjustments to the borrower's monthly repayment amount and repayment period.

(k) *Refunds received from schools*. If a lender receives a refund from a school on a loan that has been consolidated into a Direct Consolidation Loan, the lender shall transmit the refund and an explanation of the source of the refund to the Secretary within 30 days of receipt.

(l) *Special provisions for joint consolidation loans*. The provisions of paragraphs (l)(1) through (3) of this section apply to a Direct Consolidation Loan obtained by two married borrowers.

(1) *Deferment*. To obtain a deferment on a joint Direct Consolidation Loan under Sec. 685.204, both borrowers shall meet the requirements of that section.

(2) *Forbearance*. To obtain forbearance on a joint Direct Consolidation Loan under Sec. 685.205, both borrowers shall meet the requirements of that section.

(3) *Discharge*. (i) To obtain a discharge of a joint Direct Consolidation Loan under Sec. 685.212, each borrower shall meet the requirements for one of the types of discharge described in that section.

(ii) If a borrower meets the requirements for discharge under Sec. 685.212(d) or (e) on a loan that was consolidated into a joint Direct Consolidation Loan and the borrower's spouse does not meet the requirements for any type of discharge described in Sec. 685.212, the Secretary discharges a portion of the consolidation loan equal to the amount of the loan that would have been eligible for discharge under the provisions of Sec. 685.212(d) or (e), as applicable.

(Authority: 20 U.S.C. 1078-8, 1087a et seq.)

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(b)(19), (b)(21), (c)(3), (d) (1)(ii)(E), and (f)(1)(iii) revised June 12, 1996, effective July 12, 1996.

Subpart C--Requirements, Standards, and Payments for Direct Loan Program Schools

Sec. 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) *General*. (1) Participation of a school in the Direct Loan Program means that eligible students at the school may receive Direct Loans. To participate in the Direct Loan Program, a school shall--

(i) Demonstrate to the satisfaction of the Secretary that the school meets the requirements for eligibility under the Act and applicable regulations; and

(ii) Enter into a written program participation agreement with the Secretary.

(2) The chief executive officer of the school shall sign the program participation agreement on behalf of the school.

(b) *Program participation agreement*. In the program participation agreement, the school shall promise to comply with the Act and applicable regulations and shall agree to--

(1) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(2) Estimate the need of each of these students as required by part F of the Act for an academic year. For

purposes of estimating need, a Direct Unsubsidized Loan, a Direct PLUS Loan, or any loan obtained under any State-sponsored or private loan program may be used to offset the expected family contribution of the student for that year;

(3) Certify that the amount of the loan for any student under part D of the Act is not in excess of the annual limit applicable for that loan program and that the amount of the loan, in combination with previous loans received by the borrower, is not in excess of the aggregate limit for that loan program;

(4) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act;

(5) Provide timely and accurate information to the Secretary for the servicing and collecting of loans--

(i) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school;

(ii) Upon request by the Secretary, concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(iii) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(6) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(7) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(8) Provide that eligible students at the school and their parents may participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that a student may not receive loans under both part D of the Act and part B of the Act for the same period of enrollment and a parent (borrowing for the same student) may not receive loans under both part D of the Act and part B of the Act for the same period of enrollment;

(9) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(10) Provide that the school will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act or any benefits associated with such a loan; and

(11) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) *Origination.* (1) If a school or consortium originates loans in the Direct Loan Program, it shall enter into a supplemental agreement that--

(i) Provides that the school or consortium will originate loans to eligible students and parents in accordance with part D of the Act, and

(ii) Provides that the note or evidence of obligation on the loan is the property of the Secretary.

(2) The chief executive officer of the school shall sign the supplemental agreement on behalf of the school.

(Authority: 20 U.S.C. 1087a et seq., 1094)

Sec. 685.301 Origination of a loan by a Direct Loan Program school.

(a) *Determining eligibility and loan amount.* (1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. A school shall originate a Direct Loan while the student meets the borrower eligibility requirements of Sec. 685.200. Except as provided in 34 CFR Part 668, subpart E, a school may rely in good faith upon statements made in the application by the student.

(2) A school shall provide to the Secretary borrower information that includes but is not limited to--

(i) The borrower's eligibility for a loan, as determined in accordance with Sec. 685.200 and Sec. 685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) A school may not originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan, or a combination of loans, for an amount that--

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in Sec. 685.203; or

(ii) Exceeds the student's estimated cost of attendance less--

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(4)(i) A school determines a Direct Subsidized or Direct Unsubsidized Loan amount in accordance with Sec. 685.203 and the definitions in 34 CFR 668.2 for the proration of loan amounts required for undergraduate students.

(ii) When prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school originates the loan.

(5) The date of loan origination is the date a school creates the electronic loan origination record.

(6) If a student has received a determination of need for a Direct Subsidized Loan that is $200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

(7) A school may refuse to originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, and if--

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income.

(8) A school may not assess a fee for the completion or certification of any Direct Loan Program forms or information or for the origination of a Direct Loan.

(b) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school that originates loans shall determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) Unless paragraph (b)(5), (6), or (7) of this section applies, an institution shall disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), or (6) of this section applies--

(i) If a loan period is more than one payment period, the school shall disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school shall make at least two disbursements during that payment period. The school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period.

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods; or

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not make a second disbursement until the later of--

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework in the loan period.

(6) If an educational program measures academic progress in clock hours, the school may not make a second disbursement until the later of--

(i) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(ii) The date, as determined by the institution, that the student has completed half of the clock hours in the loan period.

(7) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(8) A school not in a State is not required to make more than one disbursement.

(c) *Promissory note handling.* (1) The Secretary provides promissory notes for use in the Direct Loan Program. A school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school that originates a loan shall provide to the Secretary an executed, legally enforceable promissory note as proof of the borrower's indebtedness.

(d) *Reporting to the Secretary.* (1) A school that originates a loan must submit the promissory note, loan origination record, and initial and subsequent disbursement records to the Secretary no later than 30 days following the date of disbursement. A school must submit the loan origination record and disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(2) A school that participates under standard origination must submit the initial and subsequent disbursement record to the Secretary no later than 30 days following the date of disbursement. A school must submit the disbursement record to the Secretary no later than 30 days following the date of disbursement for each subsequent disbursement.

(Authority: 20 U.S.C. 1087a et seq.)

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Note: OMB control number added June 28, 1995, effective July 1, 1995. (a)(5) and (a)(6) redesignated as (a)(6) and (a)(7), respectively, and (a)(5) and (d) added December 1, 1995, effective July 1, 1996. (a)(1), (a)(3), (a)(4)(ii), and (b)(2)(iv) revised June 12, 1996, effective July 12, 1996. Note: (a)(6) and (a)(7) revised June 19, 1996, effective July 1, 1996. (b) amended November 29, 1996, effective July 1, 1997. (a)(6) and (a)(7) redesignated as (a)(7) and (a)(8), respectively, and new (a)(6) added November 28, 1997, effective July 1, 1998.

Sec. 685.302 Schedule requirements for courses of study by correspondence.

(a) This section contains requirements relating to the enrollment status of students in schools that offer programs of study by correspondence.

(b) A school that offers a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(c) The school shall include in its schedule--

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any resident training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a et seq.)

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Sec. 685.303 Processing loan proceeds.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan proceeds. The school shall also comply with any rules for processing loan proceeds contained in 34 CFR Part 668.

(b) *General.* (1)(i) *A school that initiates the drawdown of funds.* A school may not disburse loan proceeds to a borrower unless the school has obtained an executed, legally enforceable promissory note from the borrower.

(ii) *A school that does not initiate the drawdown of funds.* A school may disburse loan proceeds only to a borrower for whom the school has received funds from the Secretary.

(2)(i) Except in the case of a late disbursement under paragraph (d) of this section, or as provided in paragraph (b)(2)(iii) of this section, a school may disburse loan proceeds only to a student, or a parent in the case of a PLUS Loan, if the school determines the student has continuously maintained eligibility in accordance with the provisions of Sec. 685.200 from the beginning of the loan period described in the promissory note.

(ii) In the event a student delays attending school for a period of time, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment. However, the school must comply with the requirements under paragraph (b)(3) of this section.

(iii) If, after a school makes the first disbursement to a borrower, the student becomes ineligible due solely to the school's loss of eligibility to participate in the title IV programs or the Direct Loan Program, the school may make subsequent disbursements to the borrower as permitted by 34 CFR Part 668.

(iv) If, prior to making any disbursement to a borrower, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make a disbursement and any subsequent disbursement to the student if the school determines and documents in the student's file--

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half- time basis.

(3) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made, or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school shall notify the Secretary, within 30 days of the date described in Sec. 685.305(a), of the student's withdrawal, expulsion, or failure to attend school, as applicable, and return to the Secretary--

(i) Any loan proceeds credited by the school to the student's account; and

(ii) The amount of payments made by the student to the school, to the extent that they do not exceed the amount of any loan proceeds disbursed by the school to the student.

(4) If a student is enrolled in the first year of an undergraduate program of study and has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Direct Subsidized, or Direct Unsubsidized Loan, a school may not disburse the proceeds of a Direct Subsidized or Direct Unsubsidized Loan until 30 days after the first day of the student's program of study.

(c) *Processing of the proceeds of a Direct Loan.* Schools shall follow the procedures for disbursing funds in 34 CFR 668.164.

(d) *Late Disbursement.* A school may make a late disbursement according to the provisions found under 34 CFR 668.164(g).

(e) *Treatment of excess loan proceeds.* Before the disbursement of any Direct Subsidized or Direct Unsubsidized Loan proceeds, if a school learns that the borrower will receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either--

(1) Using the student's Direct Unsubsidized, Direct PLUS, or State- sponsored or another non-Federal loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more subsequent disbursements to eliminate the overaward.

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Sec. 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a)(5) of this section, a school shall conduct initial counseling prior to making the first disbursement of the proceeds of a Direct Subsidized or Direct Unsubsidized Loan to a borrower unless--

(i) The borrower is enrolled in a correspondence program or a study-abroad program approved for credit at the home school; or

(ii) The borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, Federal Unsubsidized Stafford, or Federal SLS Loan.

(2) The counseling must be in person, by audiovisual presentation, or by computer-assisted technology. In each case, the school shall ensure that an individual with knowledge of the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a student enrolled in a correspondence program or a study-abroad program approved for credit at the home school, the school shall provide the borrower with written counseling materials by mail prior to disbursing the loan proceeds.

(3) In conducting the initial counseling, the school shall--

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports, garnishment of wages, and litigation;

(iii) Provide the borrower with general information with respect to the average indebtedness of students who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the borrower's program of study; and

(iv) Inform the student as to the average anticipated monthly repayment for those students based on the average indebtedness provided under paragraph (a)(3)(iii) of this section.

(4) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(5) A school may adopt an alternative approach for initial counseling as part of the school's quality assurance plan described in Sec. 685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1)-(3) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must--

(i) Ensure that each borrower subject to initial counseling under paragraph (a)(1) of this section is provided written counseling materials that contain the information described in paragraph (a)(3) of this section;

(ii) Be designed to target those students who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach. These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

(b) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the borrower ceases at least half-time study at the school, except that--

(i) In the case of a correspondence program, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling materials to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall--

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the borrower's program of study.

(ii) Review for the borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Provide options to the borrower concerning those debt-management strategies that the school determines would facilitate repayment by the borrower;

(iv) Explain to the borrower how to contact the party servicing the student's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3) (i) and (ii) of this section;

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain cancellation of a loan; and

(vii) Require the borrower to provide corrections to the school's records concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the name and address of the borrower's expected employer (if known). The school shall provide this information to the Secretary within 60 days.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(4) The school shall maintain in the student borrower's file documentation substantiating the school's compliance with paragraphs (a) and (b) of this section as to that borrower.

(Authority: 20 U.S.C. 1087a et seq.)

(b)(2)(i) revised November 28, 1997, effective July 1, 1998.

Sec. 685.305 Determining the date of a student's withdrawal.

(a) Except as provided in paragraph (b) of this section, a school shall follow the procedures in 34 CFR 668.22(j) for determining the student's date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in 34 CFR 668.22(j) for determining the student's date of withdrawal except that the school must determine the student's date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school shall use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund must be paid under Sec. 685.306.

(Authority: 20 U.S.C. 1087 et seq.)

Note: Section revised June 12, 1996, effective July 12, 1996.

Sec. 685.306 Payment of a refund to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund from the school that is allocable to the loan. A school--

(1) Shall pay that portion of the student's refund that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) *Determination, allocation, and payment of a refund.* In determining the portion of a student's refund that is allocable to a Direct Loan, the school shall follow the procedures established in 34 CFR 668.22 for allocating and paying a refund that is due.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.307 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may withdraw from the program by providing written notice to the Secretary.

(b) A participating school that intends to withdraw from the Direct Loan Program shall give at least 60 days notice to the Secretary.

(c) Unless the Secretary approves an earlier date, the withdrawal is effective on the later of--

(1) 60 days after the school notifies the Secretary; or

(2) The date designated by the school.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.308 Remedial actions.

(a) *General.* The Secretary may require the repayment of funds and the purchase of loans by the school if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible, resulted in whole or in part from--

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program in accordance with 34 CFR part 668, subpart G.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) *General.* A participating school shall--

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR part 668; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall--

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days if it discovers that a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan has been made to or on behalf of a student who--

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(i) Enrolled at that school but has ceased to be enrolled on at least a half-time basis;

(ii) Has been accepted for enrollment at that school but failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) Has changed his or her permanent address.

(3) The Secretary provides student status confirmation reports to a school at least semi-annually.

(4) The Secretary may provide the student status confirmation report in either paper or electronic format.

(c) *Record retention requirements.* An institution shall follow the record retention and examination requirements in this part and in 34 CFR 668.24.

(d) *Accounting requirements.* A school shall follow accounting requirements in 34 CFR 668.24(b).

(e) *Direct Loan Program bank account.* Schools shall follow the procedures for maintaining funds established in 34 CFR 668.163.

(f) *Division of functions.* Schools shall follow the procedures for division of functions in 34 CFR 668.16(c).

(g) *Limit on use of funds.* Except for funds paid to a school under section 452(b)(1) of the Act, funds received by a school under this part may be used only to make Direct Loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1087a et seq.)

(Approved by the Office of Management and Budget under control number 1840-0672)

Note: OMB control number added June 28, 1995, effective July 1, 1995. (a)(1), (c), and (d) revised; (e), (f), and (g) removed; (h), (i), and (j) redesignated as (e), (f), and (g), respectively November 27, 1996, effective July 1, 1997. (e) amended November 29, 1996, effective July 1, 1997.

Subpart D--School Participation and Loan Origination in the Direct Loan Program

Sec. 685.400 School participation requirements for academic years 1996-1997 and beyond.

(a)(1) In order to qualify for initial participation in the Direct Loan Program, a school must meet the eligibility requirements in section 435(a) of the Act, including the requirement that it have a cohort default rate of less than 25 percent for at least one of the three most recent fiscal years for which data are available unless the school is exempt from this requirement under section 435(a)(2)(C) of the Act.

(2) In order to continue to participate in the Direct Loan Program, a school must continue to meet the requirements of paragraph (a)(1) of this section for years for which cohort default rate data represent the years prior to the school's participation in the Direct Loan Program.

(b) In order to qualify for initial participation, the school must not be subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the Act.

(c) If schools apply as a consortium, each school in the consortium must meet the requirements in paragraphs (a) and (b) of this section.

(Authority: 20 U.S.C. 1087a et seq.)

Sec. 685.401 Selection criteria and process for academic years 1996-1997 and beyond.

(a) The Secretary selects schools to participate in the Direct Loan Program for an academic year beginning in 1996-1997 from among those that apply to participate.

(b) In evaluating an application from an eligible school, the Secretary--

(1) To the extent possible, selects schools that are reasonably representative of the schools that are participating in the FFEL Program in terms of anticipated loan volume, length of academic program, control of the school, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience; and

(2) In order to ensure an expeditious but orderly transition from the FFEL Program to the Direct Loan Program, selects schools that the Secretary believes will make the transition as smooth as possible.

(Authority: 20 U.S.C. 1087a et seq.)

(Approved by the Office of Management and Budget under control number 1840-0672)

Note: OMB control number added June 28, 1995, effective July 1, 1995.

Sec. 685.402 Criteria for schools to originate loans for academic years 1996-1997 and beyond.

(a) *Initial determination of origination status.* (1) *Standard origination.* Any school eligible to participate in the Direct Loan Program under Sec. 685.400 is eligible to participate under standard origination.

(2) *School Origination.* To be eligible to originate loans, a school must meet the following criteria:

(i) Have participated in the Federal Perkins Loan Program, the Federal Pell Grant Program, or, for a graduate and professional school, a similar program for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(ii) If participating in the Federal Pell Grant Program, not be on the reimbursement system of payment.

(iii) In the opinion of the Secretary, have had no severe performance deficiencies for any of the programs under title IV of the Act, including deficiencies demonstrated by the most recent audit or program review.

(iv) Be financially responsible in accordance with the standards of 34 CFR 668.15.

(v) Be current on program and financial reports and audits required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program.

(vi) Be current on Federal cash transaction reports required under title IV of the Act for the 12-month period immediately preceding the date of application to participate in the Direct Loan Program and have no final determination of cash on hand that exceeds immediate title IV program needs.

(vii) Have no material findings in any of the annual financial audits submitted for the three most recent years preceding the date of application to participate in the Direct Loan Program.

(viii) Provide an assurance that the school has no delinquent outstanding debts to the Federal Government, unless--

(A) Those debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government; or

(B) The Secretary determines that the existence or amount of the debts has not been finally determined by the cognizant Federal agency.

(3) A school that meets the criteria to originate loans may participate under school origination option 1 or 2 or under standard origination.

(b) *Change in origination status.* (1) After the initial determination of a school's origination status, the Secretary may allow a school that does not qualify to originate loans under either origination option 1 or origination option 2 to do so if the Secretary determines that the school is fully capable of originating loans under one of those options.

(2)(i) At any time after the initial determination of a school's origination status, a school participating under origination option 2 may request to change to origination option 1 or standard origination, and a school participating under origination option 1 may request to change to standard origination.

(ii) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(3)(i) A school participating under origination option 1 may apply to participate under option 2, and a school participating in standard origination may apply to participate under either origination option 1 or 2 after one full year of participation in its initial origination status.

(ii) Applications to participate under another origination option are considered on an annual basis.

(iii) An application to participate under another origination option is evaluated on the basis of criteria and performance standards established by the Secretary, including but not limited to--

(A) Eligibility under paragraph (a)(2) of this section;

(B) Timely submission of accurate origination and disbursement records;

(C) Successful completion of reconciliation on a monthly basis; and

(D) Timely submission of completed and signed promissory notes, if applicable.

(iv) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(c) *Secretarial determination of change in origination status.* (1) At any time after a school has been approved to originate loans, the Secretary may require a school participating under origination option 2 to convert to option 1 or to standard origination and may require a school participating under origination option 1 to convert to standard origination.

(2) The Secretary may require a school to change origination status if the Secretary determines that such a change is necessary to ensure program integrity or if the school fails to meet the criteria and performance standards established by the Secretary, including but not limited to--

(i) For an origination option 1 school, eligibility under paragraph (a)(2) of this section, the timely submission of completed and signed promissory notes and accurate origination and disbursement records, and the successful completion of reconciliation on a monthly basis; and

(ii) For an origination option 2 school, the criteria and performance standards required of origination option 1 schools and accurate and timely drawdown requests.

(3) The change in origination status becomes effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(d) *Origination by consortia.* A consortium of schools may participate under origination options 1 or 2 only if all members of the consortium are eligible to participate under paragraph (a)(2) of this section. All provisions of this section that apply to an individual school apply to a consortium.

(e) School determination of change of Servicer. (1) The Secretary assigns one or more Servicers to work with a school to perform certain functions relating to the origination and servicing of Direct Loans.

(2) A school may request the Secretary to designate a different Servicer. Documentation of the unsatisfactory performance of the school's current Servicer must accompany the request. The Servicer requested must be one of those approved by the Secretary for participation in the Direct Loan Program.

(3) The Secretary grants the request if the Secretary determines that--

(i) The claim of unsatisfactory performance is accurate and substantial; and

(ii) The Servicer requested by the school can accommodate such a change.

(4) If the Secretary denies the school's request based on a determination under paragraph (e)(3)(ii) of this section, the school may request another Servicer.

(5) The change in Servicer is effective when the school receives notice of the Secretary's approval, unless the Secretary specifies a later date.

(Authority: 20 U.S.C. 1087a et seq.)

APPENDIX A--Income Contingent Repayment

Note: Appendix amended July 1, 1997, effective July 1, 1997.

Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans, 8.25 percent interest rate, and an adjusted gross income (AGI) of $22,791.

Step 1: Determine annual payments based on what the borrower would pay over 12 years using standard amortization. To do this, multiply the principal balance by the constant multiplier for 8.25 percent interest (0.1315452). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (See the constant multiplier chart below to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315452 x 12,500=1,644.315

Step 2: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the borrower's income (if the income is not listed, you can calculate the applicable income percentage factor by following the instructions under the interpolation heading below):

- 80.33% (0.8033) x 1,644.315=1,320.8782

Step 3: Determine 20 percent of discretionary income. For a single borrower, subtract the poverty level for a family of one, as published in the Federal Register on March 10, 1997 (62 FR 10856), from the borrower's income and multiply the result by 20%:

- $22,791--$7,890=$14,901
- $14,901 x 0.20=$2,980.20

Step 4: Compare the amount from step 2 with the amount from step 3. The lower of the two will be the borrower's annual payment amount. This borrower will be paying the amount calculated under step 2. To determine the monthly repayment amount, divide the annual amount by 12.

- 1,320.8782 / 12=$110.07

Example 2. Married borrowers repaying jointly under the income contingent repayment plan with a combined AGI of $28,627. The husband has a Direct Loan balance of $5,000, and the wife has a Direct Loan balance of $15,000. The interest rate is 8.25 percent. This couple has no children.

Step 1: Add the Direct Loan balances of the husband and wife together to determine the aggregate loan balance.

- $5,000+$15,000=$20,000

Step 2 Determine the annual payments based on what the couple would pay over 12 years using standard amortization. To do this, multiply the aggregate principal balance by the constant multiplier for 8.25 percent interest (0.1315452). (See the constant multiplier chart to determine the constant multiplier you should use for the interest rate on the loan. If the exact interest rate is not listed, choose the next highest rate for estimation purposes.)

- 0.1315452 x 20,000=2,630.904

Step 3 Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to the couple's income (if the income is not listed, you can calculate the applicable income percentage factor by following the instructions under the interpolation heading below):

- 87.61% (0.8761) x 2,630.904=2,304.9350

Step 4 Determine 20 percent of the couple's discretionary income. To do this, subtract the HHS poverty level for a family of 2, as published in the Federal Register on March 10, 1997 (62 FR 10856), from the couple's income and multiply the result by 20 percent:

- $28,627--$10,610=$18,017

- $18,017 x 0.20=$3,603.40

Step 5 Compare the amount from step 3 with the amount from step 4. The lower of the two will be the annual payment amount. The married borrowers will be paying the amount calculated under step 3. To determine the monthly repayment amount, divide the annual amount by 12.

- 2,304.9350 / 12=$192.08

Interpolation: If your income does not appear on the income percentage factor table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $26,000. To interpolate, you must first find the interval between the closest income listed that is less than $26,000 and the closest income listed that is greater than $26,000 (for this discussion, we'll call the result "the income interval"):

- $28,627--$22,791=$5,836

Next, find the interval between the two income percentage factors that are given for these incomes (for this discussion, we'll call the result, the "income percentage factor interval"):

- 88.77--80.33=8.44

Subtract the income shown on the chart that is immediately less than $26,000 from $26,000:

- $26,000-$22,791=$3,209

Divide the result by the number representing the income interval:

- $3,209 / $5,836=0.5499

Multiply the result by the income percentage factor interval:

- 0.5499 x 8.44=4.64

Add the result to the lower income percentage factor used to calculate the income percentage factor interval for $26,000 in income:

- 4.64+80.33=84.97%

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the income contingent repayment plan.

Income Percentage Factors
(Based on Annual Income)

Single		Married and Head of Household	
Income	% Factor	Income	% Factor
7,483	55.00%	7,483	50.52%
10,297	57.79%	11,808	56.68%
13,249	60.57%	14,073	59.56%
16,270	66.23%	18,397	67.79%
19,154	71.89%	22,791	75.22%
22,791	80.33%	28,627	87.61%
28,627	88.77%	35,903	100.00%
35,903	100.00%	43,180	100.00%
43,180	100.00%	54,096	109.40%
51,898	111.80%	72,287	125.00%
66,453	123.50%	97,756	140.60%
94,118	141.20%	136,716	150.00%
107,916	150.00%	223,403	200.00%
192,217	200.00%		

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION

Interest Rate	7.00%	7.25%	7.43%	7.50%	7.75%	8.00%	8.25%	8.38%	8.50%	8.75%	9.00%
Annual Constant Multiplier	0.1234056	0.1250112	0.126174	0.1266276	0.1282548	0.129894	0.1315452	0.132408	0.1332072	0.13488	0.1365636

Income Contingent Repayment Plan
Sample First-Year Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
9,000	15	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19	19
10,000	16	32	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35
12,500	16	33	49	66	77	77	77	77	77	77	77	77	77	77	77	77	77	77	77	77	77	77	77	77
15,000	17	35	52	70	87	105	119	119	119	119	119	119	119	119	119	119	119	119	119	119	119	119	119	119
17,500	19	38	56	75	94	113	132	150	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160
20,000	20	40	61	81	101	121	142	162	182	202	202	202	202	202	202	202	202	202	202	202	202	202	202	202
22,500	22	44	65	87	109	131	153	175	196	218	244	244	244	244	244	244	244	244	244	244	244	244	244	244
25,000	23	46	69	92	114	137	160	183	206	229	275	285	285	285	285	285	285	285	285	285	285	285	285	285
30,000	25	50	75	100	125	149	174	199	224	249	299	349	369	369	369	369	369	369	369	369	369	369	369	369
35,000	27	54	81	108	135	162	189	216	243	270	324	370	432	452	452	452	452	452	452	452	452	452	452	452
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	493	535	535	535	535	535	535	535	535	535	535
45,000	28	56	84	112	140	168	197	225	253	281	337	393	449	505	562	618	619	619	619	619	619	619	619	619
50,000	30	60	90	120	150	180	210	239	269	299	359	419	479	539	599	659	702	702	702	702	702	702	702	702
55,000	31	63	94	125	157	188	219	251	282	313	376	439	501	564	626	689	752	785	785	785	785	785	785	785
60,000	32	65	97	130	162	195	227	259	292	324	389	454	519	584	648	713	778	843	869	869	869	869	869	869
65,000	34	67	101	134	168	201	235	268	302	335	402	469	536	603	671	738	805	872	939	952	952	952	952	952
70,000	34	69	103	138	172	207	241	276	310	345	414	483	551	620	689	758	827	896	965	1,034	1,035	1,035	1,035	1,035
75,000	35	71	106	141	177	212	247	283	318	353	424	495	566	636	707	778	848	919	990	1,060	1,119	1,119	1,119	1,119
80,000	36	72	109	145	181	217	254	290	326	362	435	507	580	652	724	797	869	942	1,014	1,087	1,159	1,202	1,202	1,202
85,000	37	74	111	148	185	223	260	297	334	371	445	519	594	668	742	816	890	965	1,039	1,113	1,187	1,261	1,285	1,285
90,000	38	76	114	152	190	228	266	304	342	380	456	532	608	684	759	835	911	987	1,063	1,139	1,215	1,291	1,367	1,369
95,000	39	78	117	155	194	233	272	311	350	389	466	544	622	699	777	855	932	1,010	1,088	1,166	1,243	1,321	1,399	1,452
100,000	40	79	119	159	199	238	278	318	358	397	477	556	636	715	794	874	953	1,033	1,112	1,192	1,271	1,351	1,430	1,535

Sample repayment amounts are based on an interest rate of 8.25%.

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Income Contingent Repayment Plan
Sample First-Year Monthly Repayment Amounts for a Married or Head-of-Household Borrower at Various Income and Debt Levels
(Family Size=3)

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12,500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15,000	17	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28
17,500	18	36	54	70	70	70	70	70	70	70	70	70	70	70	70	70	70	70	70	70	70	70	70	70
20,000	19	39	58	77	97	111	111	111	111	111	111	111	111	111	111	111	111	111	111	111	111	111	111	111
22,500	20	41	61	82	102	123	143	153	153	153	153	153	153	153	153	153	153	153	153	153	153	153	153	153
25,000	22	44	66	88	109	131	153	175	195	195	195	195	195	195	195	195	195	195	195	195	195	195	195	195
30,000	25	49	74	99	123	148	173	197	222	247	278	278	278	278	278	278	278	278	278	278	278	278	278	278
35,000	27	54	81	108	135	162	189	216	243	270	324	361	361	361	361	361	361	361	361	361	361	361	361	361
40,000	27	55	82	110	137	164	192	219	247	274	329	384	438	445	445	445	445	445	445	445	445	445	445	445
45,000	28	56	84	111	139	167	195	223	251	278	334	390	445	501	528	528	528	528	528	528	528	528	528	528
50,000	29	58	87	116	145	174	203	232	261	290	348	406	464	522	580	611	611	611	611	611	611	611	611	611
55,000	30	60	91	121	151	181	211	242	272	302	362	423	483	543	604	664	695	695	695	695	695	695	695	695
60,000	31	63	94	125	157	188	220	251	282	314	376	439	502	565	627	690	753	778	778	778	778	778	778	778
65,000	33	65	98	130	163	195	228	260	293	325	391	456	521	586	651	716	781	846	861	861	861	861	861	861
70,000	34	67	101	135	169	202	236	270	303	337	405	472	540	607	674	742	809	877	944	945	945	945	945	945
75,000	35	69	104	139	174	208	243	278	312	347	417	486	555	625	694	764	833	903	972	1,028	1,028	1,028	1,028	1,028
80,000	36	71	107	142	178	213	249	284	320	356	427	498	569	640	711	782	853	924	995	1,067	1,111	1,111	1,111	1,111
85,000	36	73	109	146	182	218	255	291	328	364	437	509	582	655	728	801	873	946	1,019	1,092	1,164	1,195	1,195	1,195
90,000	37	74	112	149	186	223	261	296	335	372	447	521	596	670	745	819	894	968	1,042	1,117	1,191	1,266	1,278	1,278
95,000	38	76	114	152	190	228	266	305	343	381	457	533	609	685	761	838	914	990	1,066	1,142	1,218	1,294	1,361	1,361
100,000	39	77	116	155	193	232	271	309	348	387	464	542	619	696	774	851	928	1,006	1,083	1,160	1,238	1,315	1,392	1,445

Sample repayment amounts are based on an interest rate of 8.25%

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PART 690--FEDERAL PELL GRANT PROGRAM

Subpart A--Scope, Purpose and General Definitions

Sec.

690.1 Scope and purpose.

690.2 Definitions.

690.3 [Removed and reserved]

690.4-690.5 [Removed and Reserved]

690.6 Duration of student eligibility.

690.7 Institutional participation.

690.8 Enrollment status for students taking regular and correspondence courses.

690.9 Written agreements between two or more eligible institutions.

690.10 Administrative cost allowance to participating schools.

690.11 Federal Pell Grant payments from more than one institution.

Subpart B--Application Procedures for Determining Expected Family Contribution

690.12 Application.

690.13 Notification of expected family contribution.

690.14 Applicant's request to recalculate expected family contribution because of a clerical or arithmetic error or the submission of inaccurate information.

Subparts C through E--[Removed and Reserved]

Subpart F--Determination of Federal Pell Grant Awards

690.61 Disbursement conditions and deadlines.

690.62 Calculation of a Federal Pell Grant.

690.63 Calculation of a Federal Pell Grant for a payment period.

690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years.

690.65 Transfer student: attendance at more than one institution during an award year.

690.66 Correspondence study.

Subpart G--Administration of Grant Payments

690.71 Scope.

690.72-690.74 [Removed and Reserved]

690.75 Determination of eligibility for payment.

690.76 Frequency of payment.

690.77 [Removed and Reserved]

690.78 Method of disbursement--by check or credit to a student's account.

690.79 Recovery of overpayments.

690.80 Recalculation of a Federal Pell Grant award.

690.81 Fiscal control and fund accounting procedures.

690.82 Maintenance and retention of records.

690.83 Submission of reports.

690.84 [Removed]

Subpart H--[Removed and Reserved]

Authority: 20 U.S.C. 1070a, unless otherwise noted

Subpart A--Scope, Purpose and General Definitions

Sec. 690.1 Scope and purpose.

The Federal Pell Grant Program awards grants to help financially needy students meet the cost of their post-secondary education.

(Authority: 20 U.S.C. 1070a)

PART 690--FEDERAL PELL GRANT PROGRAM

Sec. 690.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Accredited
Award year
Clock hour
Correspondence course
Educational program
Eligible student
Payment period
Recognized equivalent of high school diploma
Regular student
Secretary
State

(b) Definitions of the following terms used in this part are described in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Dependent student
Eligible program
Eligible student
Enrolled
Federal Pell Grant Program
Federal Perkins Loan Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Full-time student
HEA
Independent student
Parent
State Student Incentive Grant Program

(c) Other terms used in this part are:

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full academic year in an award year, and the amount a three-quarter-time, half-time, and less-than-half-time student would receive under the appropriate Disbursement Schedule for being enrolled in that enrollment status for a full academic year in an award year.

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application information, transmits an ISIR to each institution designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on--

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

(3) The amount of funds available for making Federal Pell Grants.

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which--

(1) A student is able to transmit his or her application information to the central processor through his or her institution and an ISIR is transmitted back to the institution;

(2) A student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) An institution is able to receive an ISIR from the central processor for a student.

Enrollment status: Full-time, three-quarter-time, half-time, or less-than-half-time depending on a student's credit-hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

Expected family contribution (EFC): The amount, determined under title IV, part F of the HEA, which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year.

Half-time student: (1) Except as provided in paragraph (2), an enrolled student who is carrying a half-time academic work load--as determined by the institution--which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week, or is earning at least 6 credit hours per semester, trimester, or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

Institution of higher education (Institution): An institution of higher education, or a proprietary institution of higher education, or a postsecondary vocational institution as defined in 34 CFR part 600.

Institutional Student Information Record (ISIR): A paper document or a computer-generated electronic record that the central processor transmits to an institution that includes an applicant's--

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

Less-than-half-time student: An enrolled student who is carrying less than half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

Payment Data: An electronic or magnetic record that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

Payment Schedule: A table showing a full-time student's Scheduled Federal Pell Grant for an academic year. This table, published annually by the Secretary, is based on--

(1) The student's expected family contribution, as determined in accordance with part F of title IV of the HEA; and

(2) The student's cost of attendance as defined in part F of title IV of the HEA.

(3) The amount of funds available to the Secretary for making Federal Pell Grants.

Scheduled Federal Pell Grant: The amount of a Federal Pell Grant which would be paid to a full-time student for a full academic year.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load--as determined by the institution--which amounts to at least three quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who--

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

Valid Student Aid Report: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070a, unless otherwise noted)

Note: (a) and (b) redesignated (b) and (c), respectively, and amended, and new paragraph (a) added November 6, 1991, effective December 28, 1991. (a), (b), and (c) amended November 1, 1994, effective July 1, 1995. "Payment Voucher" definition removed and "Payment Data" definition added December 1, 1995, effective July 1, 1996. Definition of "Comparable State income tax return" removed and definition of "Annual award" revised November 27, 1996, effective July 1, 1997. Section heading and (a) introductory clause amended and "Payment period" added to (a) November 29, 1996, effective July 1, 1997.

Sec. 690.3 [Removed and reserved]

Note: Section removed and reserved November 29, 1996, effective July 1, 1997.

Secs. 690.4 and 690.5 [Removed and Reserved]

Sec. 690.6 Duration of student eligibility.

(a) A student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study. Any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in the institution's determination of that student's period of Federal Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

Note: (b) amended November 1, 1994, effective July 1, 1995.

Sec. 690.7 Institutional participation.

(a) If an institution begins participation in the Federal Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Federal Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the Federal Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution before the date the institution became ineligible is paid a Federal Pell Grant for that award year for--

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary--

(1) The name and enrollment status of each eligible student, who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Federal Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Federal Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Federal Pell Grant expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a)

Note: (a)(1)(i) amended November 6, 1991, effective December 28, 1991. (a)(1) removed and (a)(2) redesignated as (a) December 1, 1995, effective July 1, 1996.

Sec. 690.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which--

(1) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under Sec. 690.8	No. of credit hours regular work	No. of credit hours corre-spondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter time.
(b)(3)	6	6	12	Full-time.
(b)(3)&(c)	2	6	6	Half-time.
(c)[1]	...	...	...	Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

(Authority: 20 U.S.C. 1070a)

Note: (c) and (d) amended November 1, 1994, effective July 1, 1995.

Sec. 690.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions which apply toward his or her degree or certificate at the first institution may receive Federal Pell Grant assistance for attendance at both institutions only if there is a written agreement between the institutions.

(1) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's Federal Pell Grant assistance. However, the other institution may determine and pay the student's Federal Pell Grant assistance if the institutions agree in writing to that agreement.

(2) The institution which determines and pays the Federal Pell Grant assistance shall--

(i) Take into account all courses which apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of Federal Pell Grant assistance.

(Authority: 20 U.S.C. 1070a)

Sec. 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Federal Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely to pay the institution's cost of administering the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs.

(c) If an institution enrolls a significant number of students who are attending less-than-full-time or are independent students, the institution shall use a reasonable proportion of these funds to make financial aid services available during times and in places that will most effectively accommodate the needs of those students.

(Authority: 20 U.S.C. 1096)

Note: (c) added November 1, 1994, effective July 1, 1995. (b) revised November 27, 1996, effective July 1, 1997.

Sec. 690.11 Federal Pell Grant payments from more than one institution.

A student is not entitled to receive Federal Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a)

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Subpart B--Application Procedures for Determining Expected Family Contribution

Sec. 690.12 Application.

(a) As the first step to receiving a Federal Pell Grant, a student shall apply on an approved application form to the Secretary to have his or her expected family contribution calculated. A copy of this form is not acceptable.

(b) The student shall submit an application to the Secretary by--

(1) Providing the application form, signed by all appropriate family members, to the institution at which the student attends or plans to attend so that the institution can transmit electronically the application information to the Secretary under EDE; or

(2) Sending an approved application form to the Secretary.

(c) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(d) For each award year the Secretary, through publication in the **Federal Register**, established deadline dates for submitting these applications and for making corrections to the information contained in the applications.

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under control number 1840-0681)

Note: (a), (b), and (c) amended November 1, 1994, effective July 1, 1995. (b)(2) amended May 2, 1995, effective July 1, 1995. OMB control number amended June 12, 1995, effective July 1, 1995. (b)(1) amended November 27, 1996, effective July 1, 1997.

Sec. 690.13 Notification of expected family contribution.

The Secretary sends a student's application information and EFC as calculated by the central processor to the student on an SAR and allows each institution designated by the student to obtain an ISIR for that student.

(Approved by the Office of Management and Budget under control number 1840-0681)

(Authority: 20 U.S.C. 1070a)

Note: Section amended November 27, 1996, effective July 1, 1997.

Sec. 690.14 Applicant's request to recalculate expected family contribution because of a clerical or arithmetic error or the submission of inaccurate information.

(a) An applicant may request that the Secretary recalculate his or her expected family contribution if--

(1) He or she believes a clerical or arithmetic error has occurred, or

(2) The information he or she submitted was inaccurate when the application was signed.

(b) The applicant shall request that the Secretary make the recalculation described in paragraph (a) of this section by--

(1) Having his or her institution transmit that request to the Secretary under EDE; or

(2) Sending to the Secretary an approved form, certified by the student, and one of the student's parents if the student is a dependent student.

(c) If an institution transmits electronically the student's recalculation request to the Secretary, the corrected information must be supported by--

(1) Information contained on an approved form, that is certified by the student, and if the student is a dependent student, one of the student's parents, or

(2) Verification documentation provided by a student under 34 CFR 668.57.

(d) The recalculation request must be received by the Secretary no later than the deadline date established by the Secretary through publication in the **Federal Register**.

(Authority: 20 U.S.C. 1070a)

Note: Section amended November 27, 1996, effective July 1, 1997.

Subpart C through E--[Removed and Reserved]

Subpart F--Determination of Federal Pell Grant Awards

Sec. 690.61 Disbursement conditions and deadlines.

(a) Submission process. (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a Federal Pell Grant to an eligible student who is otherwise qualified to receive that disbursement if--

(i) The student submits a valid SAR to the institution; or

(ii) The institution obtains a valid ISIR for the student.

(2) In determining a student's eligibility to receive his or her Federal Pell Grant, an institution is entitled to assume that SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f) and 668.60.

(b) Student Aid Report or Institutional Student Information Record deadline. Except as provided in 34 CFR 668.60, for a student to receive a Federal Pell Grant for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must obtain a valid ISIR by the earlier of--

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the **Federal Register**.

(Authority: 20 U.S.C. 1070a)

Note: Section amended November 1, 1994, effective July 1, 1995. (a)(1)(ii) and (b)(2) amended November 27, 1996, effective July 1, 1997.

Sec. 690.62 Calculation of a Federal Pell Grant.

(a) The amount of a student's Federal Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b) No payment may be made to a student if the student's annual award is less than $200. However, a student who is eligible for an annual award that is equal to or greater than $200, but less than or equal to $400, shall be awarded a Federal Pell Grant of $400.

(Authority: 20 U.S.C. 1070a (a)(2))

Note: (b) amended November 1, 1994, effective July 1, 1995.

Sec. 690.63 Calculation of a Federal Pell Grant for a payment period.

(a)(1) Programs using standard terms with at least 30 weeks of instructional time. A student's Federal Pell Grant for a payment period is calculated under paragraphs (b) or (d) of this section if--

(i) The student is enrolled in an eligible program that--

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program--

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Provides at least 30 weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section.

(2) Programs using standard terms with less than 30 weeks of instructional time. A student's Federal Pell Grant for a payment period is calculated under paragraph (c) or (d) of this section if--

(i) The student is enrolled in an eligible program that--

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program--

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

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(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) Other programs using terms and credit hours. A student's Federal Pell Grant for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that--

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) Programs not using terms or using clock hours. A student's Federal Pell Grant for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that--

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) Programs of study offered by correspondence. A student's Federal Pell Grant payment for a payment period is calculated under Sec. 690.66 if the program is offered by correspondence courses.

(6) Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3. If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's Federal Pell Grant payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in--

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(iii) The institution uses the methodology described in Sec. 690.66 if the program is correspondence study.

(b) Programs using standard terms with at least 30 weeks of instructional time. The Federal Pell Grant for a payment period, i.e., an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by--

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students; and

(3) Dividing the amount described under paragraph (b)(2) of this section by--

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if--

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) Programs using standard terms with less than 30 weeks of instructional time. The Federal Pell Grant for a payment period, i.e., an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by--

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

In a program using semesters or trimesters--

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall and spring semesters}}{\text{The number of weeks in the program's academic year}}$$

; or

In a program using quarters--

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks in the program's academic year}}$$

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if--

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) Other programs using terms and credit hours. The Federal Pell Grant for a payment period, i.e., an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by--

(1)(i) For a student enrolled in a semester, trimester, or quarter, determining his or her enrollment status for the term; or

(ii) For a student enrolled in a term other than a semester, trimester, or quarter, determining his or her enrollment status for the term by--

(A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program's academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by comparing the number of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section for that term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time student;

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the program's academic year}}\ ;$$

and

(4) Paying the student the amount determined under paragraph (d)(3) of this section.

(e) Programs using clock hours or credit hours without terms. The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by--

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule;

(2) Multiplying the amount determined under paragraph (e)(1) of this section by the lesser of--

(i) $$\frac{\text{The number of weeks of instructional time required for a full-time student to complete the lesser of the clock or credit hours in the program or the academic year}}{\text{The number of weeks of instructional time in the program's academic year}}$$

; or

(ii) One; and

(3) Multiplying the amount determined under paragraph (e)(2) of this section by--

$$\frac{\text{The number of credit or clock hours in a payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

(f) A single disbursement may not exceed 50 percent of any award determined under paragraph (d) or (e) of this section. If a payment for a payment period calculated under paragraphs (d) or (e) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g)(1) Notwithstanding paragraphs (b), (c), (d), and (e) of this section and 34 CFR 668.66, the amount of a student's award for an award year may not exceed his or her Scheduled Federal Pell Grant award for that award year except as provided in Sec. 690.67.

(2) For purposes of this section and Sec. 690.66, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.2 and 668.3.

(Authority: 20 U.S.C. 1070a)

Note: Section amended November 1, 1994, effective July 1, 1995.

Sec. 690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period which is scheduled to occur in two award years--

(1) The entire payment period must be considered to occur within one award year.

(2) The institution shall determine for each Federal Pell Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Federal Pell Grant for an award year.

(Authority: 20 U.S.C. 1070a)

Sec. 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Federal Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student may receive a Federal Pell Grant at the second institution only if--

(1) The student submits a valid SAR to the second institution; or

(2) The second institution obtains a valid ISIR.

(b) The second institution shall calculate the student's award according to Sec. 690.63.

(c) The second institution may pay a Federal Pell Grant only for that portion of the academic year in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student's Scheduled Federal Pell Grant for that award year except as provided under Sec. 690.67.

(d) If a student's Scheduled Federal Pell Grant at the second institution differs from the Scheduled Federal Pell Grant at the first institution, the grant amount at the second institution is calculated as follows--

(1) The amount received at the first institution is compared to the Scheduled Federal Pell Grant at the first institution to determine the percentage of the Scheduled Federal Pell Grant that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled Federal Pell Grant at the second institution to which the student is entitled.

(e) The student's Federal Pell Grant for each payment period is calculated according to the procedures in Sec. 690.63 unless the remaining percentage of the Scheduled Federal Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's Federal Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year that exceeds--

(1) His or her Scheduled Federal Pell Grant; or

(2) The amount which he or she was eligible to receive for the award year under Sec. 690.67.

(Authority. 20 U.S.C. 1070a)

Note: (a), (c) and (f) amended November 1, 1994, effective July 1, 1995.

Sec. 690.66 Correspondence study.

(a) An institution calculates the Federal Pell Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component by--

(1) Determining the student's annual award using the half-time Disbursement Schedule;

(2) Determining the length of the correspondence program in weeks of instructional time by--

(i) Preparing a written schedule for submission of lessons that reflect a workload of at least 12 hours of preparation per week; and

(ii) Determining the number of weeks of instructional time in the program of study using the written schedule for submission of lessons;

(3) Multiplying the annual award determined from the Disbursement Schedule for a half-time student by the lesser of--

$$(i)\ \frac{\text{The number of weeks of instructional time as determined under paragraph (a)(2)(ii) of this section for a student to complete the lesser of the credit hours in the program or the academic year}}{\text{The number of weeks of instructional time in the program's academic year definition}}$$

, or

(ii) One; and

(4) Multiplying the amount determined under (a)(3) of this section by--

$$\frac{\text{The number of credit hours in the payment period}}{\text{The number of credit hours in the program's academic year}}$$

(b) For purposes of paragraph (a) of this section--

(1) An academic year as measured in credit hours must consist of 2 payment periods--

(i) The first payment period must be the period of time in which the student completes the lesser of the first half of his or her academic year or program; and

(ii) The second payment period must be the period of time in which the student completes the lesser of the second half of the academic year or program; and

(2)(i) The institution shall make the first payment to a student for an academic year, as calculated under paragraph (a)(4) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(ii) The institution shall make the second payment to a student for an academic year, as calculated under (a)(4) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component--

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the Disbursement Schedule for a half-time student is used; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term the Disbursement Schedule for a less-than-half-time student is used;

(3) A payment for a payment period is calculated using the formula in Sec. 690.63(d) except that paragraphs (c)(1) and (2) of this section are used in lieu of Sec. 690.63(d) (1) and (2) respectively; and

(4) The institution shall make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training shall be calculated under Sec. 690.63(d) if the residential training is offered using terms and credit hours or Sec. 690.63(e) if the residential training is offered using credit hours without terms.

(Authority: 20 U.S.C. 1070a)

Note: Section amended November 1, 1994, effective July 1, 1995.

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Sec. 690.67 Receiving up to two Scheduled Federal Pell Grant awards during a single award year.

(a) The Secretary announces in the **Federal Register** whether an institution may award up to a second Scheduled Federal Pell Grant to a student in a particular award year.

(b) Based on the announcement described in paragraph (a) of this section, an institution may award up to a second Scheduled Federal Pell Grant award to a student in that award year if--

(1) The student is enrolled as a full-time student in an eligible program that is at least 2 academic years as measured in credit hours and weeks of instructional time and leads to an associate or baccalaureate degree at an institution;

(2) The student is enrolled only in coursework required for completing his or her associate or baccalaureate degree, including courses in his or her major area of study or electives that fulfill the student's graduation requirements, during any payment period in which the student is paid any portion of his or her second Scheduled Federal Pell Grant award;

(3) In the previous payment periods in the award year the student has completed the number of credit hours required in an academic year leading to his or her associate or baccalaureate degree program; and

(4) The student has completed the weeks of instructional time required for an academic year or will complete them in the first payment period for which he or she will receive a payment from his or her second Scheduled Federal Pell Grant award.

(c) If an institution awards a student up to a second Scheduled Federal Pell Grant award, the institution must make such awards to all students who qualify under paragraph (a) of this section.

(Authority 20 U.S.C. 1070a)

Note: Section added November 1, 1994, effective July 1, 1995.

Subpart G--Administration of Grant Payments

Sec. 690.71 Scope.

This subpart deals with program administration by an institution of higher education.

(Authority: 20 U.S.C. 1070a)

Note: Second sentence removed December 1, 1995, effective July 1, 1996.

Secs. 690.72, 690.73, and 690.74 [Removed and Reserved]

Note: Sections removed and reserved December 1, 1995, effective July 1, 1996.

Sec. 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Federal Pell Grant to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student--

(1) Qualifies as an eligible student under 34 CFR 668.7;

(2) Is enrolled in an eligible program as an undergraduate student; and

(3)(i) Has completed required clock hours for which he or she has been paid a Federal Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours; or

(ii) Has completed the required credit hours for which he or she has been paid a Federal Pell Grant, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.

(b) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Federal Pell Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Federal Pell Grant for that payment period nor make adjustments in subsequent Federal Pell Grant payments to compensate for the loss of aid for that period.

(d) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution amount at least equal to the maximum authorized award amount for the award year if that religious order--

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under control number 1840-0681)

Note: (a)(3) amended November 6, 1991, effective December 28, 1991. (a)(2) and (b) amended November 1, 1994, effective July 1, 1995. OMB control number added June 12, 1995, effective July 1, 1995. (a)(2) and (e) amended November 27, 1996, effective July 1, 1997. (b) removed and (c), (d), and (e) redesignated as (b), (c), and (d), respectively, November 29, 1996, effective July 1, 1997.

Sec. 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a)

Note: (b) amended November 6, 1991, effective December 28, 1991.

Sec. 690.77 [Removed and Reserved]

Sec. 690.78 Method of disbursement--by check or credit to a student's account.

(a) An institution shall disburse funds to a student or the student's account in accordance with the provisions in Sec. 668.164.

(b) The institution shall return to the Federal Pell Grant account any funds paid to a student who, before the first day of classes--

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(c)(1) An institution that intends to pay a student directly must notify the student in accordance with Sec. 668.165(a).

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 20 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 20-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

(4) A student forfeits the rights to receive the payment if her or she does not pick up a payment by the end of the 20 day period.

(5) Notwithstanding paragraphs (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(6) An institution shall make a late disbursement to an ineligible student in accordance with the provisions in 34 CFR 668.164(g).

(Authority: 20 U.S.C. 1070a)

Note: (d)(3) amended November 6, 1991, effective date December 28, 1991. (b) removed, (c) and (d) redesignated as (b) and (c), respectively, and (a) and (c)(1) amended December 1, 1994, effective July 1, 1995. (c)(2), (c)(3), (c)(4), and (c)(6) amended November 27, 1996, effective July 1, 1997. (a) amended November 29, 1996, effective July 1, 1997.

Sec. 690.79 Recovery of overpayments.

(a)(1) The student is liable for any Federal Pell Grant overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this Part. The institution shall restore those funds to its Federal Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by--

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers to a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

(Authority: 20 U.S.C. 1070a)

Note: (c) amended November 6, 1991, effective December 28, 1991.

Sec. 690.80 Recalculation of a Federal Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Federal Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from--

(i) The correction of a clerical or arithmetic error under Sec. 690.14; or

(ii) A correction based on information required as a result of verification under 34 CFR part 668, Subpart E.

(2) Except as described in 34 CFR 668.60(c), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made--

(i) Within the same award year--if possible--to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Federal Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. If such a policy is established, it must apply to all students.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(c) *Change in cost of attendance.* If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students.

(Authority: 20 U.S.C. 1070a)

Note: (a) and (b)(1) amended November 1, 1994, effective July 1, 1995.

Sec. 690.81 Fiscal control and fund accounting procedures.

(a) An institution shall follow provisions for maintaining general fiscal records in this part and in 34 CFR 668.24(b).

(b) An institution shall maintain funds received under this part in accordance with the requirements in Sec. 668.164.

(Authority: 20 U.S.C. 1070a)

(Approved by OMB under control number 1840-0536)

Note: (b) amended December 1, 1994, effective July 1, 1995. (c) removed November 27, 1996, effective July 1, 1997. (a) amended November 27, 1996, effective July 1, 1997.

Sec. 690.82 Maintenance and retention of records.

(a) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Approved by the Office of Management and Budget under control number 1840-0681)

(Authority: 20 U.S.C. 1070a, 1232f)

Note: Section amended November 27, 1996, effective July 1, 1997.

Sec. 690.83 Submission of reports.

(a) (1) An institution may receive either a payment from the Secretary for an award to a Federal Pell Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if--

(i) The institution submits to the Secretary the student's Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student's Payment Data.

(2) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the **Federal Register**, and that contain information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(b) (1) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant for which a student qualifies by submitting to the Secretary the student's Payment Data that discloses the basis and result of the change in award for each student. Through publication in the **Federal Register**, the Secretary divides the award year into periods and establishes the deadlines by which the institution shall report changes occurring during each period. The institution shall submit the student's Payment Data reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(2) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the **Federal Register**, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of a Federal Pell Grant award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under Sec. 690.79(a).

(c) In accordance with 34 CFR 668.84 the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a) or (b) of this section.

(d) (1) Notwithstanding paragraphs (a) or (b) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraphs (d)(4) and either (d)(2) or (d)(3) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report of an award year that was the first audit of that award year and that was conducted after December 31, 1988 and timely submitted to the Secretary under 34 CFR 668.23(c).

(3) An institution that timely submits the Payment Data for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, the Payment Data necessary to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if--

(i) A program review demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported in the student's Payment Data timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least $100.

(4) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or program review or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a, 1094, 1226a-1)

(Approved by the Office of Management and Budget under control number 1840-0688)

Note: Section and authority citation amended November 6, 1991, effective December 28, 1991. (c)(1)(ii) amended June 25, 1992, effective August 9, 1992. (e) added April 29, 1994, effective July 1, 1994. (a) through (d) amended December 1, 1995, effective July 1, 1996. (e) removed February 1 1996, effective July 1, 1996.

Sec. 690.84 [Removed]

Note: Section removed November 6, 1991, effective December 28, 1991.

Subpart H--[Removed and Reserved]

PART 691--PRESIDENTIAL ACCESS SCHOLARSHIP PROGRAM

Subpart A--General

Sec.

691.1 Scope and purpose.

691.2 General definitions.

691.3 Payment period.

691.4 [Reserved]

691.5 [Reserved]

691.6 Duration of student eligibility.

691.7 Institutional participation.

691.8 Enrollment status for students taking regular and correspondence courses.

691.9 Written agreements between two or more eligible institutions.

691.10 [Reserved]

691.11 Payments from more than one institution.

Subpart B--Application Procedures and Eligibility Requirements

691.12 The application process.

691.13-691.14 [Reserved]

691.15 Eligibility to apply initially for a scholarship.

691.16 Eligibility requirements to receive an award.

691.17 Eligibility requirements to continue to receive an award.

Subpart C through E--[Reserved]

Subpart F--Determination of Awards

691.61 Disbursement conditions and deadlines.

691.62 Calculation of a Presidential Access Scholarship Program award.

691.63 Calculation of a Presidential Access Scholarship for a payment period.

691.64 Calculation of a Presidential Access Scholarship for a payment period that occurs in 2 award years.

691.65 Transfer student: attendance at more than one institution during an award year.

691.66 Correspondence study.

Subpart G--Institutional Administration

691.71 Scope.

691.72 Institutional participation agreement.

691.73 Termination of institutional participation agreement.

691.74 [Reserved]

691.75 Determination of eligibility for payment.

691.76 Frequency of payment.

691.77 [Reserved]

691.78 Method of disbursement by check or credit to a student's account.

691.79 Recovery of overpayments.

691.80 Recalculation of a PAS Program award.

691.81 Fiscal control and fund accounting procedures.

691.82 Maintenance and retention of records.

691.83 Submission of reports.

Subpart H--Administrative Responsibilities of a State

691.90 Early-intervention agreement.

691.91 Records a State must maintain.

Authority: 20 U.S.C. 1070a-31 et seq.

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PART 691--PRESIDENTIAL ACCESS SCHOLARSHIP PROGRAM

Subpart A--General

Sec. 691.1 Scope and purpose.

The purposes of the Presidential Access Scholarship (PAS) Program are to encourage students to finish high school and attend college and to upgrade the course of study completed by high school graduates who are from low- or moderate-income families.

(Authority: 20 U.S.C. 1070a-31)

Sec. 691.2 General definitions.

(a) Definitions of the following terms used in this part are described in subpart A of the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600: Accredited Award year, Clock hour program, Correspondence course, Educational program, Eligible institution, Recognized equivalent of high school diploma, Regular Student, Secretary, and State.

(b) Definitions of the following terms used in this part are described in subpart A of the Student Assistance General Provisions, 34 CFR part 668: Academic year, Enrolled, Federal Pell Grant Program, Full-time student, and HEA.

(c) Other terms used in this part are:

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application data, transmits an ISIR to each of the institutions designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on--

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which--

(1) A student is able to transmit his or her application information to the central processor through his or her institution and an ISIR is transmitted back to the institution;

(2) The student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) The institution receives an ISIR from the central processor for that student.

Eligible early-intervention program: A program as required under Sec. 691.16(a)(5) that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary financial aid, to students enrolled in preschool through grade 12. To qualify, a program must be one of the following:

(1) A Talent Search project as described in 34 CFR part 643 and authorized under section 402B of the HEA, as amended;

(2) An Upward Bound project as described in 34 CFR part 645 and authorized under section 402C of the HEA, as amended;

(3) An Opportunity Center as described in 34 CFR part 644 and authorized under section 402F of the HEA, as amended; or

(4) A National Early Intervention Scholarship and Partnership Program as authorized under section 404A of the HEA, as amended; or

(5) A program that is certified as an honors scholars program by the Governor of the State in which it is offered and that the Governor determines meets comparable requirements for any program funded under 34 CFR parts 643, 644, 645, or section 404A of the HEA.

Expected family contribution (EFC): The amount which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year.

Half-time student: (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic work load--as determined by the institution--that amounts to at least half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week or is earning at least 6 credit hours per semester, trimester, or quarter. However, regardless of the

workload, no student enrolled solely in correspondence study is considered more than a half-time student.

Honors scholars program: A program designed to encourage a high level of academic achievement from students who are enrolled in the program.

Institutional Student Information Record (ISIR): A paper document or a computer-generated electronic record that the central processor transmits to an institution that includes an applicant's--

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

Less-than-half-time student: An enrolled student who is carrying less than half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

Payment Schedule: A table showing a full-time student's Scheduled PAS Award for an academic year. This table is published annually by the Secretary.

Payment Voucher: An electronic or magnetic record, or for the 1995-96 award year a paper record, that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

Scheduled Presidential Access Scholarship: The amount of a PAS that would be paid to a full-time student for a full academic year. This table, published annually by the Secretary, is based on--

(1) The student's expected family contribution, as determined in accordance with part F of title IV of the HEA; and

(2) The student's cost of attendance as defined in part F of title IV of the HEA.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load--as determined by the institution--that amounts to at least three-quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who--

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study that usually does not exceed 4 academic years or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student only for the first 4 academic years of that program.

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

Valid Student Aid Report: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070a-31 et seq.)

Sec. 691.3 Payment period.

(a) Payment period for an eligible program that has academic terms:

(1) Except as noted in paragraph (a)(2) of this section, for an eligible program that uses semesters, trimesters, quarters, or other academic terms, the payment period is the semester, trimester, quarter, or other academic term.

(2) For an eligible program that uses semesters, trimesters, quarters, or other academic terms and measures progress in clock hours--

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a PAS for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) Payment periods for an eligible program that does not have academic terms:

(1) For a student whose eligible program is one academic year or less--

(i) The first payment period is the period of time in which the student completes the first half of his or her program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of his or her program as measured in credit or clock hours; or

(2) For a student whose eligible program is more than one academic year--

(i) For the first academic year, the first payment period is the period of time in which the student completes the first half of his or her academic year as measured in credit or clock hours, and the second payment period is the period of time in which the student completes the second half of that academic year.

(ii) For subsequent academic years, each payment period is the period of time in which the student first completes--

(A) One half of the academic year; or

(B) The remainder of the student's program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section at an institution measuring progress in credits hours, if a student cannot earn half of his or her credits in the program under paragraph (b)(1) of this section or the academic year under paragraph (b)(2) of this section until after the midpoint between the first and last scheduled days of class, the student is considered to begin his or her second payment period on the later of--

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by institution, that the student has completed half of his or her academic coursework.

(4) If an institution chooses to have more than two payment periods in an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070a-32)

Secs. 691.4-691.5 [Reserved]

Sec. 691.6 Duration of student eligibility.

A scholarship under the PAS Program shall be awarded to a student for a period of--

(a) Not more than 4 academic years; or

(b) Not more than 5 academic years in the case of a student who is enrolled in an undergraduate course of study requiring attendance for the full-time equivalent of 5 academic years.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.7 Institutional participation.

(a)(1) An institution of higher education is eligible to award scholarships for the PAS Program if it--

(i) Meets the appropriate definition set forth in section 481 of the HEA;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR part 668.

(2) If an institution begins participation in the PAS Program during an award year, a student enrolled in and attending that institution is eligible to receive a PAS for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the PAS Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution or whose institution received a valid ISIR from the U.S. Department of Education before the date the institution became ineligible is paid a PAS for that award year for--

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution that becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary--

(1) The name and enrollment status of each eligible student who, during the award year, received a PAS at the institution before it became ineligible;

(2) The amount of funds paid to each PAS recipient for that award year;

(3) The amount due each student eligible to receive a PAS through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the PAS expenditures for that award year to the date of ineligibility.

(Authority: 20 U.S.C. 1070a-32)

(Approved by the Office of Management and Budget under control number 1840-0681)

Sec. 691.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which--

(1) Applies toward a student's degree or certificate;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under Sec. 691.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter time.
(b)(3)	6	6	12	Full-time.
(b)(3)&(c)	2	6	6	Half-time.
(c)[1]	...	...	...	Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

(Authority: 20 U.S.C. 1070a-32)

(Approved by the Office of Management and Budget under control number 1840-0681)

Sec. 691.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions that apply toward his or her degree or certificate at the first institution may receive a PAS for attendance at both institutions only if there is a written agreement between the institutions.

(b) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's PAS. However, the other

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institution may determine and pay the student's PAS if the institutions agree in writing to that arrangement.

(c) The institution that determines and pays the PAS shall--

(1) Take into account all courses that apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(2) Maintain all records regarding the student's eligibility for and receipt of the PAS.
(Authority: 20 U.S.C. 1070a-32)

(Approved by the Office of Management and Budget under control number 1840-0681)

Sec. 691.10 [Reserved]

Sec. 691.11 Payments from more than one institution.

A student is not entitled to receive PAS Program payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a-32)

Subpart B--Application Procedures and Eligibility Requirements

Sec. 691.12 The application process.

Each eligible student desiring to apply for a PAS shall--

(a) Submit annually an application to the Secretary on the same approved form and at the same time the student applies for a Federal Pell Grant;

(b) Provide the application to the Secretary within the time frame required to apply for a Federal Pell Grant; and

(c) Provide such information as is required to apply for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a-33)

Secs. 691.13-691.14 [Reserved]

Sec. 691.15 Eligibility to apply initially for a scholarship.

A student is eligible to apply for a PAS for his or her first year of postsecondary study if the student--

(a) Is scheduled to graduate from or is a graduate of a public or private secondary school, or has the equivalent of a high school diploma as recognized by the State in which the eligible student resides, but has not yet received a baccalaureate degree; and

(b) Is either enrolled, accepted for enrollment, or intends to enroll, at an institution of higher education not later than 3 calendar years after the date that the student graduates from secondary school or obtains the recognized equivalent of a high school diploma.

(Authority: 20 U.S.C. 1070a-35)

Sec. 691.16 Eligibility requirements to receive an award.

(a) A student is eligible to receive a PAS for his or her first year of postsecondary study if the student--

(1) Is eligible to receive a Federal Pell Grant in the award year in which the PAS is awarded;

(2) Is enrolled or accepted for enrollment in a degree or certificate program of at least 2 years in length;

(3) Has demonstrated academic achievement and preparation for postsecondary education by taking the following college preparatory level coursework that includes at least--

(i) Four years of English;

(ii) Three years of science;

(iii) Three years of mathematics;

(iv) Either--

(A) Three years of history; or

(B) Two years of history and one year of social studies; and

(v) Either--

(A) Two years of foreign language; or

(B) One year of computer science and 1 year of foreign language;

(4) Has earned a grade point average of 2.5 or higher, on a scale of 4.0, in the final 2 years of high school; and

(5) Has either (i) participated for a minimum period of 36 months in an eligible early-intervention program; or

(ii) Ranked in the top 10 percent, by grade point average, of the student's secondary school graduating class.

(b) Notwithstanding the requirements in paragraph (a)(5) of this section, a student may receive a PAS if an authorized official of the State in which the student resides certifies to the Secretary that the student was unable to participate in an eligible early-intervention program because--

(1) The program was not available in the area where the student resides; or

(2) Due to unusual and exceptional circumstances, the student was unable to participate in such a program.

(c) Notwithstanding the requirements in paragraph (a)(3) of this section, a student may receive a PAS if the student's secondary school does not offer the necessary coursework required in paragraph (a)(3) of this section, and the student has completed the required coursework at another local secondary school or at a community college.

(d) Notwithstanding the requirements in paragraph (a)(3)(v) of this section, a student may receive a PAS if the student is--

(1) Fluent in a language other than English and participates in a program to learn English; or

(2) An English-speaking student who is fluent in a second language.

(Authority: 20 U.S.C. 1070a-33, 1070a-35, 1070a-36(c))

Sec. 691.17 Eligibility requirements to continue to receive an award.

(a) To be eligible to continue to receive a PAS after the first year of postsecondary study, a student shall--

(1) Continue to meet the eligibility requirements in Sec. 691.16(a)(1) and (2); and

(2) Fulfill the requirements for satisfactory academic progress as described in 34 CFR in 668.7(c) (the Student Assistance General Provisions regulations) and section 484(c) of the HEA.

(b) If a student ceases to be eligible for a PAS because he or she is no longer eligible for a Federal Pell Grant, the student can later regain eligibility to receive a PAS at the time he or she qualifies for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a-33)

Subparts C through E--[Reserved]

Subpart F--Determination of Awards

Sec. 691.61 Disbursement conditions and deadlines.

(a) *Submission process.* An institution makes a disbursement of a PAS to a student only if--

(1) The student submits a valid SAR to the institution; or

(2) The institution obtains a valid ISIR for that student; and

(3)(i) The student presents a certificate issued by an appropriate official of a high school in a State verifying that the student has completed the necessary coursework to qualify for a PAS; or

(ii) The student presents written documentation that he or she has participated in an approved eligible early-intervention program for at least 36 months or qualifies for an exception under Secs. 691.16(b).

(4) In determining a student's eligibility to receive his or her Federal Pell Grant, an institution is entitled to rely on valid SAR information or valid ISIR information except under the conditions set forth in 34 CFR 668.14(f) and 668.60.

(b) *Student Aid Report or Institutional Student Information Record deadline.* Except as provided in 34 CFR 668.60, for a student to receive a PAS award for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must obtain a valid ISIR--

(1) While the student is still enrolled and eligible for payment at that institution; and

(2) By June 30 of that award year.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.62 Calculation of a Presidential Access Scholarship Program award.

The amount of a student's PAS for an academic year is equal to 25 percent of the student's Federal Pell Grant awarded for that academic year as determined under 34 CFR 690.62 except that--

(a) If funding in a fiscal year is sufficient to fund fully all eligible student awards in that academic year, no payment shall be made to a full-time student of less than $400 for an academic year, independent of the amount of the Federal Pell Grant.

(b) If funding is insufficient to fund fully all eligible students, the Secretary reduces each student's award in proportion to the amount that the PAS Program is not fully funded.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.63 Calculation of a Presidential Access Scholarship for a payment period.

For an eligible student enrolled in an institution of higher education in an eligible program, the student's PAS for each payment period is calculated by--

(a) Determining his or her total PAS award in accordance with Sec. 691.62; and

(b) Determining the amount of each payment based on the payment amount for a Federal Pell Grant as calculated in accordance with Sec. 690.63.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.64 Calculation of a Presidential Access Scholarship for a payment period that occurs in 2 award years.

(a) If a student enrolls in a payment period that is scheduled to occur in 2 award years--

(1) The entire payment period must be considered to occur within 1 award year.

(2) The institution shall determine for each PAS recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than 6 months scheduled to occur within 1 award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment that will result in the student receiving more than his or her Scheduled PAS for an award year.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a PAS at one institution subsequently enrolls at a second institution in the same award year, the student may receive a PAS at the second institution only if--

(1) The student has submitted a valid SAR; or

(2) The second institution participates in the Secretary's electronic programs to report Federal Pell Grant disbursement data electronically to the Secretary and the second institution has obtained a valid ISIR, in which case the institution shall use the information from the valid ISIR to determine the amount of the student's award. (The institution shall follow the procedures set forth in 34 CFR 668.19 relating to financial aid transcripts.)

(b) The second institution shall calculate the student's award according to Sec. 691.63.

(c) The second institution may pay a PAS only for that portion of the award year in which a student is enrolled at that institution. The scholarship amount must be adjusted, if necessary, to ensure that the scholarship award does not exceed the percentage of the award remaining from the student's first institution for that award year.

(d) If a student's PAS award at the second institution differs from the Scheduled PAS Award at the first institution, the award amount at the second institution is calculated as follows--

(1) The amount received at the first institution is compared to the PAS award at the first institution to determine the percentage of the PAS award that the student has received.

(2) The percentage in paragraph (d)(1) of this section is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled PAS award at the second institution to which the student is entitled.

(e) The student's PAS award for each payment period is calculated according to the procedures in Sec. 691.63, unless the remaining percentage of the Scheduled PAS at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's PAS is equal to the remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled PAS.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.66 Correspondence study.

For an eligible student enrolled in an institution of higher education in an eligible program of correspondence study, the student's PAS for each payment period is calculated by--

(a) Determining his or her total PAS award in accordance with Sec. 691.62; and

(b) Determining the amount of each payment based on the payment amount for a Federal Pell Grant as calculated in accordance with Sec. 690.66.

(Authority: 20 U.S.C. 1070a-32)

Subpart G--Institutional Administration

Sec. 691.71 Scope.

This subpart deals with program administration by an institution of higher education. An institution shall enter into a program participation agreement with the Secretary so that it may calculate and pay PAS awards to students.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.72 Institutional participation agreement.

The Secretary may enter into an agreement with an institution of higher education pursuant to which the institution will calculate and pay PAS awards to its students.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.73 Termination of institutional participation agreement.

When an institution is terminated under 34 CFR 668.86, the institution shall provide the following information to the Secretary--

(a) The name and enrollment status of each eligible student who submitted a valid SAR or for whom the institution received a valid ISIR before the termination date.

(b) The amount of funds the institution paid to each PAS recipient before the termination date.

(c) The amount due each student eligible to receive a PAS through the end of the award year.

(d) An accounting of PAS expenditures to the date of termination.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.74 [Reserved]

Sec. 691.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a PAS to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student--

(1) Qualifies as eligible to receive a Federal Pell Grant and as an eligible student under Secs. 691.16 or 691.17 for a continuing student;

(2) Is enrolled as an undergraduate student; and

(3)(i) Has completed required clock hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in clock hours; or

(ii) Has completed the required credit hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.

(b) If an eligible student submits a valid SAR to the institution or the institution receives a valid ISIR for that student and that student then becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination before the end of the payment period, the institution may pay a PAS to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination after the end of the payment period, the institution may neither pay the student a PAS for that payment period nor make adjustments in subsequent PAS payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency, or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order--

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.77 [Reserved]

Sec. 691.78 Method of disbursement by check or credit to a student's account.

(a)(1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for--

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or her account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is 3 weeks before the first day of classes of a payment period.

(c) The institution shall return to the Secretary any funds paid to a student who, before the first day of classes--

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d)(1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the PAS award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

(4) A student forfeits the rights to receive the payment if he or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.79 Recovery of overpayments.

(a)(1) A student is liable for any PAS overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore those funds to the Secretary even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by--

(1) Making a reasonable effort to contact the student and recover the overpayment; and

(2) If unsuccessful, providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV, HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

(Authority: 20 U.S.C. 1070a-32)

(Approved by the Office of Management and Budget under control number 1840-0681)

Sec. 691.80 Recalculation of a PAS Program award.

(a) The institution shall recalculate a PAS award for the entire award year if the student's Federal Pell Grant changes at any time during the award year for any reason specified in Sec. 690.80, including changes in enrollment status, EFC, or cost of attendance.

(b) The institution shall adjust the student's award when an overaward or underaward is caused by the change in the Federal Pell Grant award. That adjustment must be made--

(1) Within the same award year--if possible--to correct any overpayment or underpayment; or

(2) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.81 Fiscal control and fund accounting procedures.

(a)(1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of PAS funds in accordance with generally accepted accounting principles.

(b) A separate bank account for PAS funds is not required. However, the institution shall notify any bank in which it deposits PAS funds of all accounts in that bank in which it deposits Federal funds.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay PAS funds to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) that include the fiscal and accounting records that are required under Sec. 691.81, records required for audits in 34 CFR 668.23, the SAR or ISIR of each student receiving a PAS, and records indicating--

(1) The eligibility for a PAS of all enrolled students who have submitted valid SARs or valid ISIRs to the institution;

(2) The name and social security number of and the amount of the PAS award paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's enrollment period; and

(6) Documentation of a student's eligibility for any part of a second Scheduled Federal Pell Grant award in any award year.

(b) Each institution shall retain any completed applications and any other documents submitted by a student to the institution under Sec. 690.14(c) if the application information is transmitted to the Secretary under EDE.

(c)(1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for 5 years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(d) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(e) An institution may substitute microform copies or other media formats acceptable to the Secretary, as published in a notice in the **Federal Register**, in lieu of original records in meeting the requirements of this section.

(Authority: 20 U.S.C. 1070a-32)

Sec. 691.83 Submission of reports.

(a)(1) An institution may receive either a payment from the Secretary for an award to a PAS recipient or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable if--

(i) The institution submits to the Secretary all SAR Payment Documents (or the equivalent as defined by the Secretary) for that award in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the scholarship is made, and

(ii) The Secretary accepts those SAR Payment Documents.

(2) The Secretary accepts SAR Payment Documents that are submitted in accordance with procedures established through publication in the **Federal Register** and that contain information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive payment or reduction in accountability only as provided in paragraph (c) of this section.

(b) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant and a resulting change in a PAS for which a student qualifies by submitting to the Secretary an SAR Payment Document reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(c)(1) An institution that has timely submitted an SAR Payment Document for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, an SAR Payment Document necessary to document the full amount of the PAS award to which the student is entitled may receive a payment or reduction in accountability in the full amount of that award if--

(i) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrated to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Document timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an overpayment for that award that is at least $100.

(2) An institution that has timely submitted and has accepted an SAR Payment Document for a student in accordance with this section shall report a reduction in the amount of a PAS award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under Sec. 690.79(a).

(3) The Secretary pays or recognizes a reduction in accountability under this paragraph after deducting the amount of any overpayments for which the institution is liable under Sec. 691.79(a).

(d) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements in paragraph (a), (b), or (c) of this section.

(e)(1) Notwithstanding paragraphs (a), (b), (c)(1) or (2), or (d) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided PAS Program scholarships in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraph (e) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988 and timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit.

(3) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a-32, 1094, 1226a-1)

Subpart H--Administrative Responsibilities of a State

Sec. 691.90 Early-intervention agreement.

For a student to receive a PAS, the State agency in the State in which the student resides shall have entered into a one-time written agreement with the Secretary, except that a State must submit a subsequent agreement if the Secretary subsequently requires changes in this initial agreement. Each State's agreement must be approved by the Secretary and must include provisions designed to ensure the following:

(a) All secondary school students in the State have equal and easy access to the coursework described in Sec. 691.16(c) and 406C(a)(2) of the HEA.

(b) The State agency has procedures in place to verify to the Secretary that--

(1) A student receiving a PAS has taken the coursework described in Sec. 691.16(c);

(2) The coursework described in Sec. 691.16 is of a college preparatory level; and

(3) The State requires all secondary schools in the State to issue a certificate to each eligible student certifying that the student has completed the necessary coursework to qualify for a PAS.

(c) The State agency has procedures in place to notify institutions of higher education of the availability of the PAS so that the institutions may award additional scholarships in concert with the PAS. The State agency has procedures to inform junior high school students enrolled in public or private schools and their families about--

(1) The value of postsecondary education;

(2) The availability of student aid to meet college expenses; and

(3) The availability of a PAS for students from low- and moderate-income families who take academically demanding courses.

(Authority 20 U.S.C. 1070a-36)

(Approved by the Office of Management and Budget under control number 1840-0681)

Sec. 691.91 Records a State must maintain.

(a) The State agency shall maintain written procedures and records to support the information supplied in the early-intervention agreement in Sec. 691.90 and the Governor's certification of other eligible early intervention programs.

(b) The State agency shall maintain the written procedures and records required under this subpart for a period of five calendar years from the end of the award year to which the records relate.

(Authority: U.S.C. 1070a-36)

(Approved by the Office of Management and Budget under control number 1840-0681)

PART 692--STATE STUDENT INCENTIVE GRANT PROGRAM

PART 692--STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A--General

Sec.

692.1 What is the State Student Incentive Grant Program?

692.2 Who is eligible to participate in the State Student Incentive Grant Program?

692.3 What regulations apply to the State Student Incentive Grant Program?

692.4 What definitions apply to the State Student Incentive Grant Program?

Subpart B--What is the Amount of Assistance and How May it Be Used?

692.10 How does the Secretary allot funds to the States?

692.11 For what purposes may a State use its payments under this program?

Subpart C--How Does a State Apply To Participate in This Program?

692.20 What must a State do to receive an allotment under this program?

692.21 What requirements must be met by a State program?

Subpart D--How Does a State Administer its Community Service-Learning Job Program?

692.30 How does a State administer its community service-learning job program?

Subpart E--How Does a State Select Students Under This Program?

692.40 What are the requirements for student eligibility?

692.41 What standards may a State use to determine substantial financial need?

Authority: 20 U.S.C 1070c through 1070c-4, unless otherwise noted.

Subpart A--General

Sec. 692.1 What is the State Student Incentive Grant Program?

The State Student Incentive Grant Program assists States in providing grants and work-study assistance to eligible students who attend institutions of higher education and have substantial financial need. The work-study assistance is provided through campus-based community service work learning study programs, hereinafter referred to as community service-learning job programs.

(Authority: 20 U.S.C. 1070c-1070c-4)

Sec. 692.2 Who is eligible to participate in the State Student Incentive Grant Program?

(A) *State participation.*

A State that meets the requirements in Sec. 692.20 and 692.21 is eligible to receive payments under this program.

(b) *Student participation.*

A student must meet the requirements of Sec. 692.40 to be eligible to receive assistance from a State under this program.

(Authority: 20 U.S.C. 1070c-1070c-4, unless otherwise noted))

Sec. 692.3 What regulations apply to the State Student Incentive Grant Program?

The following regulations apply to the State Student Incentive Grant Program:

(a) The regulations in this Part 692.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60--75.62 (Ineligibility of Certain Individuals to Receive Assistance).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) The regulations in 34 CFR Part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(d) The Student Assistance General Provisions in 34 CFR Part 668.

(Authority: 20 U.S.C. 1070c-1070c-4)

Sec. 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the regulations in this part:

(a) *Definitions in 34 CFR Part 668.* The following terms used in this part are defined in 34 CFR Part 668:

Enrolled (Sec. 668.2).
HEA (Sec. 668.2).
Public or private nonprofit institution of higher education (Sec. 668.3).
Secretary (Sec. 668.2).
State (Sec. 668.2).

(b) *Definitions in the HEA.* The following terms used in this part are defined in section 481(a), (b), (c), and (d) of the HEA:

Academic year
Institution of higher education
Postsecondary vocational institution
Proprietary institution of higher education

(c) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Full-time student" means a student carrying a full-time academic workload-other than by correspondence-as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

"Nonprofit" has the same meaning under this part as the same term defined in 34 CFR 77.1 of EDGAR.

(Authority: 20 U.S.C. 1070c-1070c-4)

Subpart B--What Is the Amount of Assistance and How May It Be Used?

Sec. 692.10 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the SSIG program an amount which bears the same ratio to the Federal SSIG funds appropriated as the number of students in that State who are "deemed eligible" to participate in the State's SSIG program bears to the total number of students in all States who are "deemed eligible" to participate in the SSIG program, except that no State may receive less than it received in fiscal year 1979.

(2) If the Federal SSIG funds appropriated for a fiscal year are not sufficient to allot to each State the amount of Federal SSIG funds it received in fiscal year 1979, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal SSIG funds appropriated as the amount of Federal SSIG funds that State received in fiscal year 1979 bears to the amount of Federal SSIG funds all States received in fiscal year 1979.

(b) For the purpose of paragraph (a)(1) of this section, the Secretary determines the number of students "deemed eligible" to participate in a State's SSIG Program by dividing the amount of that State's SSIG expenditures, including both its Federal allotment and the State-appropriated funds matching the allotment, by the average grant award per student of all participating States. The Secretary determines the "average grant award per student" by dividing the total number of student recipients for all States into the total amount of SSIG expenditures for all States, including both the Federal allotments and the State-appropriated funds matching those allotments. In making this determination, the Secretary uses the most current available data reported by each State.

(Authority: 20 U.S.C. 1070c)

Sec. 692.11 For what purposes may a State use its payments under the program?

A State may use the funds it receives under this part only to make grants to students and to pay wages or salaries to students in community service-learning jobs.

(Authority: 20 U.S.C. 1070c)

Subpart C--How Does a State Apply To Participate in This Program?

Sec. 692.20 What must a State do to receive an allotment under this program?

(a) To participate in the State Student Incentive Grant Program, a State shall enter into an agreement with the Secretary under section 1203 of the HEA (Federal-State Relationship Agreement).

(b) For each fiscal year that it wishes to participate, a State shall submit an application that contains information that shows that its State Student Incentive Grant Program meets the requirements of Sec. 692.21.

(c)(1) Except as provided in paragraph (c)(2) of this section, the State shall submit its application through the State agency designated in its Federal-State Relationship Agreement to administer its State Student Incentive Grant Program as of July 1, 1985.

(2) If the Governor of the State so designates, and notifies the Secretary through a modification to the State's Federal-State Relationship Agreement, the State may submit its application under paragraph (b) of this section through an agency that did not administer its State Student Incentive Grant Program as of July 1, 1985.

(Authority: 20 U.S.C. 1070c-2(a))

(Cross-reference: See 34 CFR Part 604, Federal-State Relationship Agreements)

(Approved by the Office of Management and Budget under control number 1840-0544)

Sec. 692.21 What requirements must be met by a State program?

To receive a payment under this program for any fiscal year, a State must have a program that--

(a) Is administered by a single State agency in accordance with the Federal-State Relationship Agreement under section 1203 of the HEA;

(b) Provides assistance only to students who meet the eligibility requirements in Sec. 692.40;

(c) Provides that assistance under this program to a full-time student will not be more than $5,000 for each academic year;

(d) Provides for the selection of students to receive assistance on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves;

(Cross-reference: See Sec. 692.41.)

(e) Provides that no student or parent shall be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need in accordance with paragraph (d) of this section;

(f) Provides that all public or private nonprofit institutions of higher education and all postsecondary vocational institutions in the State are eligible to participate unless that participation is in violation of--

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978;

(g) Provides that, if a State awards grants to independent students or to students who are less-than-full-time students enrolled in an institution of higher education, a reasonable portion of the State's allocation must be awarded to those students;

(h) Provides that--

(1) The State will pay an amount for grants and work-study jobs under this part for each fiscal year that is not less than the payment to the State under this part for that fiscal year; and

(2) The amount that the State expends during a fiscal year for grants and work-study jobs under this program represents an additional amount for grants and work-study jobs for students attending institutions of higher education over the amount expended by the State for those activities during the fiscal year two years prior to the fiscal year in which the State first received funds under this program;

(i) Provides for State expenditures under the State program of an amount that is not less than--

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

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(2) The average annual expenditure per full-time equivalent student for those years;

(j) Provides that, to the extent practicable, the proportion of the funds awarded to independent students in the SSIG Program shall be the same proportion of funds awarded to independent students as is in the State program or programs of which the State's SSIG Program is a part; and

(k) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(Authority: 20 U.S.C. 1070c-2)

(Approved by the Office of Management and Budget under control number 1840-0660)

Subpart D--How Does a State Administer Its Community Service-Learning Job Program?

Sec. 692.30 How does a State administer its community service-learning job program?

(a)(1) Each year, a State may use up to 20 percent of its allotment for a community service-learning job program that satisfies the conditions set forth in paragraph (b) of this section.

(2) A student who receives assistance under this section must receive compensation for work and not a grant.

(b)(1) The community service-learning job program must be administered by institutions of higher education in the State.

(2) Each student employed under the program must be employed in work in the public interest by an institution itself or by a Federal, State, or local public agency or a private nonprofit organization under an arrangement between the institution and the agency or organization.

(c) Each community service-learning job must--

(1) Provide community service as described in paragraph (d) of this section;

(2) Provide participating students community service-learning opportunities related to their educational or vocational programs or goals;

(3) Not result in the displacement of employed workers or impair existing contracts for services;

(4) Be governed by conditions of employment that are considered appropriate and reasonable, based on such factors as type of work performed, geographical region, and proficiency of the employee;

(5) Not involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; and

(6) Not pay any wage to a student that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938.

(d) For the purpose of paragraph (c)(1) of this section, "community service" means direct service, planning, or applied research that is--

(1) Identified by an institution of higher education through formal or informal consultation with local nonprofit, governmental, and community-based organizations; and

(2) Designed to improve the quality of life for residents of the community served, particularly low-income residents, in such fields as health care, child care, education, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

(e) For the purpose of paragraph (d)(2) of this section, "low-income residents" means--

(1) Residents whose taxable family income for the year before the year in which they are scheduled to receive assistance under this part did not exceed 150 percent of the amount equal to the poverty level determined by using criteria of poverty established by the United States Census Bureau; or

(2) Residents who are considered low-income residents by the State.

(Authority: 20 U.S.C. 1070c-2, 1070-4)

Subpart E--How Does a State Select Students Under This Program?

Sec. 692.40 What are the requirements for student eligibility?

To be eligible for assistance, a student must--

(a) Meet the relevant eligibility requirements contained in 34 CFR 668.7; and

(b) Have substantial financial need as determined annually in accordance with the State's criteria approved by the Secretary.

[Authority: 20 U.S.C. 1070c-2, 1091]

(Approved by the Office of Management and Budget under control number 1840-0544.)

Sec. 692.41 What standards may a State use to determine substantial financial need?

(a) A State determines whether a student has substantial financial need on the basis of criteria it establishes that are approved by the Secretary. A State may define substantial financial need in terms of family income, expected family contribution, and relative need as measured by the difference between the student's cost of attendance and the resources available to meet that cost. To determine substantial need, the State may use--

(1) A system for determining a student's financial need under part F of title IV of the HEA;

(2) The State's own needs analysis system if approved by the Secretary; or

(3) A combination of these systems, if approved by the Secretary.

(b) The Secretary generally approves a need-analysis system under paragraph (a)(2) or (3) of this section only if the need-analysis system applies the term "independent student" as defined under section 480(d) of the HEA. However, for good cause shown, the Secretary may approve, on a case-by-case basis, a State's need analysis system that uses a definition for "independent student" that varies from that term as defined in section 480(d) of the HEA.

(Authority: 20 U.S.C. 1070c-2.)

PART 693--NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

Subpart A--General

Sec.

693.1 What is the National Early Intervention Scholarship and Partnership Program?

693.2 Who is eligible to participate under this program?

693.3 What kinds of activities may be assisted under this program?

693.4 What regulations apply to this program?

693.5 What definitions apply to this program?

Subpart B--How Does a State Obtain a Grant?

693.10 What must a State do to obtain a grant under this program?

693.11 What requirements must be met by the State under the program's early intervention component?

693.12 What requirements must be met by the State under the program's scholarship component?

693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

Subpart C--How Does the Secretary Make a Grant to a State?

693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?

693.21 How does the Secretary allot funds to a State?

693.22 How does the Secretary allot funds to States on a competitive basis?

Subpart D--How Does a Student Participate in the Early Intervention Component Under the NEISP Program?

693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

Subpart E--How Does a State Award a Scholarship to a Student?

693.40 What are the requirements for a student to receive a scholarship under this program?

Subpart F--What Postaward Conditions Must be met by a State?

693.50 What are allowable costs attributable to administration of the early intervention component?

693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

693.52 What requirements must a State meet in preparing and submitting an evaluation report?

Authority: 20 U.S.C. 1070a-21 through 1070a-27, unless otherwise noted.

Subpart A--General

Sec. 693.1 What is the National Early Intervention Scholarship and Partnership Program?

Under the National Early Intervention Scholarship and Partnership (NEISP) Program, the Secretary provides grants to states to--

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide--

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

(Authority: 20 U.S.C. 1070a-21)

Sec. 693.2 Who is eligible to participate under this program?

(a) States that meet the requirements of Secs. 693.10, 693.11, 693.12, 693.13, 693.20 (formula grant program), 693.21, and 693.22 (discretionary grant program) are eligible to receive grants under this program.

(b) Under the early intervention component, students who meet the requirements of Sec. 693.30 are eligible to participate in the State-administered programs under this part.

(c) Under the scholarship component, students who meet the requirements of Sec. 693.40 are eligible to receive scholarships from States under this program.

(Authority: 20 U.S.C. 1070a-22 to 1070a-24)

Sec. 693.3 What kinds of activities may be assisted under this program?

Under the NEISP Program, a State may use its allotment under Sec. 693.21 or Sec. 693.22 to--

(a) Provide a variety of early intervention services such as comprehensive mentoring, counseling, outreach, and other supportive services to eligible students enrolled in preschool through grade 12, including prefreshman summer programs; and

(b) Award scholarships to eligible low-income students for attendance at any institution of higher education participating in the Federal Pell Grant Program.

(Authority: 20 U.S.C. 1070a-22 to 1070a-24)

Sec. 693.4 What regulations apply to this program?

The following regulations apply to the NEISP Program:

(a) The regulations in this Part 693.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) If the amount appropriated for the program is less than $50,000,000, 34 CFR part 75 (Direct Grant Programs).

(2) If the amount appropriated for the program is $50,000,000 or more, 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) Institutional Eligibility Under the Higher Education Act of 1965, as Amended in 34 CFR part 600.

(d) The Student Assistance General Provisions in 34 CFR part 668.

(Authority: 20 U.S.C. 1070a-21 through 1070a-27)

Sec. 693.5 What definitions apply to this program?

(a) *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
Elementary School
Fiscal Year
Grant
Grantee
Local educational agency (LEA)
Private
Project
Project Period

EDGAR
Secretary
State

(b) *Definitions in subpart A of the Institutional Eligibility regulations, 34 CFR part 600.* The following terms used in this part are defined in 34 CFR part 600:

Award year
Institution of higher education
Recognized equivalent of a high school diploma

(c) *Definition in the Student Assistance General Provisions regulations, 34 CFR part 668.* The following term used in this part is defined in 34 CFR part 668:

Academic year

(d) *Other definitions that apply to this part.* The following definitions also apply to this part:

At-risk student means a preschool through grade 12 student whom a State identifies as being a potential dropout from secondary or postsecondary school.

Disadvantaged student means a student who is either (1) a low-income individual who is also a first-generation college student; or (2) a student with disabilities.

Early intervention program means a program that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary student financial aid, to students enrolled in preschool through grade 12.

First-generation college student means--

(1) A student neither of whose parents completed a baccalaureate degree; or

(2) A student who regularly resides with and receives support from only one parent who did not complete a baccalaureate degree.

HEA means the Higher Education Act of 1965, as amended.

Limited proficiency in English with reference to an individual, means an individual--

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied on for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in English; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which instruction is in English because he or she cannot adequately understand, speak, read, or write English.

Low-income individual means an individual whose taxable family income for the year before the year in which he or she is scheduled to receive assistance under this part did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the U.S. Bureau of the Census or a resident who considered to be a low-income resident by the State in which he or she lives.

Postsecondary education means a program of education beyond the secondary school level.

Priority student means any student within a State in preschool through grade 12 who is eligible--

(1) To be counted as attending an institution receiving Federal funds under chapter 1 of the Elementary and Secondary Education Act of 1965;

(2) To receive free or reduced-price meals under the National School Lunch Act; or

(3) To receive assistance under the Aid to Families with Dependent Children Act.

Scholarship means an award made to an individual under this part.

Secondary school, as defined under section 1471(21) of the Elementary and Secondary Education Act of 1965, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

State educational agency (SEA), as defined under section 1471(23) of the Elementary and Secondary Education Act of 1965, means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

Student with a disability, as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), means a student with a physical or mental impairment that substantially limits one or more of the major life activities of the student and thus requires special education and related services.

(Authority: 20 U.S.C. 1070a-21 through 1070a-27)

Subpart B--How Does a State Obtain a Grant?

Sec. 693.10 What must a State do to obtain a grant under this program?

(a) To obtain a grant, a State shall submit to the Secretary for review and approval an initial plan and annual application for carrying out the activities under NEISP Program.

(b) The Secretary approves a State plan that--

(1) By direction of the State's Governor, designates as the State agency for administering the program under this part, either--

(i) The State agency that administers the State Student Incentive Grant Program under title IV, part A, subpart 4 of the HEA;

(ii) The State educational agency; or

(iii) Another appropriate State agency approved by the Secretary;

(2) Provides that the State program under this part shall be known as the "[insert name of the State] National Early Intervention Scholarship and Partnership Program" which may be referred to as the "[State name] NEISP Program,";

(3) Demonstrates to the satisfaction of the Secretary that the State will provide for the conduct under the State's NEISP Program of both--

(i) An early intervention component meeting the requirements under Sec. 693.11 as evaluated by the Secretary under the criteria in Sec. 693.20 (formula grant program) and Sec. 693.22 (discretionary grant program); and

(ii) A scholarship component meeting the requirements under Sec. 693.12;

(4) Describes the administrative plan for implementing `the State's NEISP Program, including those functions that will be carried out by public and private organizations; and

(5) Provides assurances that the State will--

(i) Ensure that the funds provided under this part supplement and do not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program;

(ii) Expend, from State, local, or private funds or other acceptable funding methods, not less than one-half of the cost of the program under this part;

(iii) Specify the methods by which such share of the costs will be paid;

(iv) Not use less than 25 percent or more than 50 percent of its total NEISP Program funds for the early intervention component, unless the State can satisfactorily demonstrate in its plan submitted to the Secretary that the State has additional means to provide scholarships to students, in accordance with the waiver provision in Sec. 693.13(b);

(v) Expend all of the NEISP Program funds under the scholarship component only to provide scholarships to eligible students; and

(vi) conduct and submit to the Secretary a biennial evaluation of the early intervention program assisted under this part in accordance with the requirements in Sec. 693.52.

(c) With the exception of its initial year of participation when each State also must submit the application required under Sec. 693.13 at the same time as the State plan under paragraph (b) of this section, the State shall submit annually an application to participate in the NEISP Program in accordance with the requirements in Sec. 693.13.

(Authority: 20 U.S.C. 1070a-22 and 1070a-26)

(Approved by the Office of Management and Budget under control number 1840-0677)

Sec. 693.11 What requirements must be met by the State under the program's early intervention component?

(a) A State shall demonstrate to the Secretary in its plan submitted according to Sec. 693.10(b) how its early intervention component provides services designed to meet the unique needs of the State's eligible students enrolled in preschool through grade 12. These services may include, but are not limited to, the following kinds of activities:

(1) A continuing system of mentoring and advising that--

(i) Is coordinated with the Federal and State community service initiatives; and

(ii) Includes such support services as--

(A) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond secondary school;

(B) After-school and summer tutoring;

(C) Assistance in obtaining summer jobs;

(D) Career mentoring;

(E) Academic counseling and assistance in secondary school course selection;

(F) Financial aid counseling that provides information on the opportunities for postsecondary student financial assistance;

(G) Instruction designed to prepare students participating in the program for careers in which students from disadvantaged backgrounds are particularly underrepresented, as determined by the State; and

(H) Programs and activities specifically designed for students with limited proficiency in English.

(2) Activities designed to ensure high school completion and college enrollment of at-risk students by providing, in addition to the activities specified under paragraph (a) of the section, the following:

(i) Assessment to identify at-risk students.

(ii) Skills assessment.

(iii) Activities to encourage volunteer and parent involvement in the activities planned under this section.

(iv) Programs that involve the participation of former or current scholarship recipients as mentors or peer counselors.

(v) Personal and family counseling, including home visits.

(vi) Staff development to provide the services under this part.

(3) Activities that encourage students to complete secondary school and pursue postsecondary education by requiring each student to enter into an agreement under which the State will provide postsecondary tuition assistance to a student, during a period of time to be established by the State, if the student agrees to achieve certain academic milestones, such as--

(i) Completing the prescribed set of secondary courses required for an individual to be eligible for a Presidential Access Scholarship under chapter 3, subpart 2, part A, title IV of the HEA; and

(ii) Maintaining satisfactory academic progress according to the requirements in 34 CFR 668.7 in a postsecondary education program.

(4) Prefreshman summer programs that--

(i) Are at institutions of higher education that also have academic support services for disadvantaged students through projects regulated by 34 CFR part 646, Student Support Services, or through comparable projects as certified by the SEA or other appropriate State agency funded by the State or other sources;

(ii) Assure the participation of students who qualify as disadvantaged students or who are eligible for comparable programs funded by the State and certified under paragraph (a)(4)(i) of this section;

(iii) Provide summer services, including--

(A) Instruction in remedial, developmental, or supportive courses;

(B) Counseling, tutoring, or orientation; and

(C) Grant aid to students to cover prefreshman summer costs for books, supplies, living costs, and personal expenses; and

(iv) Assure that participating students will receive financial aid during each academic year they are enrolled at the participating institution after the prefreshman summer.

(5) Other activities as the State proposes and the Secretary approves as supportive of the purposes of the NEISP Program.

(b) The State shall indicate to the Secretary which of the following permissible service providers will conduct the early intervention component activities:

(1) Community-based organizations.

(2) Elementary or secondary schools.

(3) Institutions of higher education.

(4) Public and private agencies.

(5) Nonprofit and philanthropic organizations.

(6) Businesses.

(7) Institutions and agencies sponsoring programs authorized under the State Student Incentive Grant Program, subpart 4, part A, title IV, of the HEA.

(8) Institutions and agencies sponsoring programs authorized under the Federal TRIO Programs, chapter 1, subpart 2, part A, title IV of the HEA.

(9) Religious organizations.

(10) Other organizations proposed by the State that are subsequently deemed appropriate by the Secretary.

(c) The State shall describe how the service providers listed in paragraph (b) of this section will administer the early intervention component activities.

(d) The State shall propose for review by and approval of the Secretary the methods by which it will target its early intervention services on priority students.

(Authority: 20 U.S.C. 1070a-23)

(Approved by the Office of Management and Budget under control number 1840-0677)

Sec. 693.12 What requirements must be met by the State under the program's scholarship component?

A State shall provide for a scholarship component that--

(a) As described in the State's plan approved by the Secretary under 693.10, is closely coordinated with other Federal, State, local, and private scholarship programs within the State;

(b) Awards scholarships only to students who meet the eligibility requirements in 693.40;

(c) Places a priority on awarding scholarships to students who will receive Federal Pell Grant awards for the academic year in which the award is being made under this part by--

(1) Selecting those eligible students who will receive Federal Pell Grants and who--

(i) Have the lowest expected family contributions as calculated under part F of title IV of the HEA; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary; and

(2) If the State has NEISP Program scholarship funds remaining after making NEISP awards to all of the eligible Federal Pell Grant recipients, awarding the remaining NEISP Program scholarship funds to those eligible students who will not receive Federal Pell Grant awards and who--

(i) Have the lowest expected family contributions; or

(ii) Are the neediest students as prioritized under the State's criteria for low-income students if the State's criteria are approved by the Secretary;

(d) Awards continuation scholarships in successive award years to each student who received an initial scholarship and who continues to meet the student eligibility requirements under Sec. 693.40;

(e) Establishes the maximum amount of a scholarship that each eligible student is to receive and ensures that no scholarship is less than the lesser of--

(1) 75 percent of the average cost of attendance, as determined under section 472, part F of the HEA, for an in-State student in a 4-year program of instruction at public institutions of higher education in the State; or

(2) The maximum Federal Pell Grant award funded for that fiscal year;

(f) Ensures that, for each recipient of a scholarship under this part who is eligible for and receiving other postsecondary student financial assistance, a Federal Pell Grant be awarded first, other public and private grant and scholarship assistance be awarded second, a scholarship under this part be awarded third, and then other financial assistance be awarded;

(g) Ensures that no scholarship awarded under this part, combined with other title IV, HEA financial assistance and any other grant or scholarship assistance exceeds the student's total cost of attendance, as determined under section 472, part F of the HEA;

(h) Expends all NEISP Program funds under the scholarship component, as determined according to Sec. 693.10(b)(5)(iv), on scholarships to students;

(i) Notifies recipients of scholarships under this part that they are to be known as "[insert name of the State] National Partnership Scholars"; and

(j) Describe to the satisfaction of the Secretary the procedures the State will use to award scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(Authority: 20 U.S.C. 1070a-24)

(Approved by the Office of Management and Budget under control number 1840-0677)

Sec. 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

(a) Each State desiring to participate in the program under this part shall submit an application annually through the state agency designated to administer the NEISP Program under Sec. 693.10(b) that contains information required by the Secretary to demonstrate that the State meets its fund-matching assurances provided for in its plan, including--

(1) The total amount of non-Federal funds, listed by each source, that the State expects to expend during the next award year that will total one-half or more of the cost of the NEISP Program such as--

(i) The amount of the scholarships paid to students from State, local, or private funds under the NEISP Program;

(ii) The amount of tuition, fees, room, or board waived or reduced for recipients of grants under the NEISP Program; and

(iii) The amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of nonschool organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit or philanthropic organizations, and other organizations proposed by the State and approved by the Secretary;

(2) A description of the specific methods by which the State's share of the costs under the NEISP Program will be paid;

(3) The percentage of the State's Federal allotment that it plans to expend for the early intervention component of its NEISP Program and, if the State requests a waiver from the Secretary under paragraph (b) of this section, the State shall submit supporting documentation, including the amount and source of its additional assistance;

(4) The documentation that assures the Secretary that the amount of funds provided in paragraph (a)(1) of this section will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant and scholarship assistance expended during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program; and

(5)(i) Proposed changes to the initial State plan that was approved by the Secretary, according to Sec. 693.10(b), for the review and approval of the Secretary; or

(ii) If no changes to its initial plan are proposed, an assurance that the State will continue to operate its NEISP Program according to the existing State plan approved by the Secretary under Sec. 693.10(b).

(b) The Secretary waives the requirement in Sec. 693.10(b)(5)(iv) and allows the State to exceed the 50 percent limit on expenditure of its Federal allotment for the early intervention component if the State can demonstrate to the satisfaction of the Secretary that the State has another adequate means to provide scholarships to eligible students under the NEISP Program.

(Authority: 20 U.S.C. 1070a-22)

(Approved by the Office of Management and Budget under control number 1840-0677)

Subpart C--How Does the Secretary Make a Grant to a State?

Sec. 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program as a formula grant program?

The Secretary uses the following criteria to determine whether a State's early intervention component proposed under Sec. 693.10(b)(3)(i) meets the requirements of Sec. 693.11:

(a) *Plan of operation.* (1) The Secretary reviews each State's plan for information that shows the quality of the operating plan of the early intervention component.

(2) The Secretary looks for information that shows--

(i) High quality in the design of the component;

(ii) An effective plan of management that ensures proper and efficient administration of the component;

(iii) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by--

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) The extent to which other State grant funds are available to eligible NEISP students for postsecondary educational scholarships if the Federal scholarship component of the program is unfunded or reduced.

(b) *Quality of key personnel.* (1) The Secretary reviews each State plan for information that shows the qualifications of the key personnel the State plans to use to administer its early intervention component.

(2) The Secretary looks for information that shows--

(i) The qualifications of the director of the early intervention component;

(ii) The qualifications of each of the other key personnel to be used in the component; and

(iii) The amount of time each person referred to in paragraphs (b)(2)(i) and (ii) of this section will spend working in the activities under this component.

(3) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each State's plan for information that shows that the early intervention component has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows--

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(3) The Secretary reviews the State's budget for the early intervention component to verify that not more than 50 percent of the State's allotment is projected to be spent on its early intervention component unless the State requests and is granted a waiver under Sec. 693.13(b).

(d) *Adequacy of resources.* (1) The Secretary reviews each State's plan for information that shows that the State plans to devote adequate resources to its early intervention component.

(2) The Secretary looks for information that shows--

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(e) *Need for the program.* (1) The Secretary reviews each State's plan for information that shows the need for the early intervention component and the methods for targeting its early intervention component activities on eligible students.

(2) The Secretary looks for information that shows--

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the 3 preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the 3 preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for--

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component.

(f) *Likelihood for success.* (1) The Secretary reviews each State plan for information that shows the likelihood of success of its early intervention component.

(2) The Secretary looks for information that shows the extent to which the State's early intervention component is likely to--

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions; and

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education.

(3) The Secretary also looks for information that shows how comprehensively the State's proposed early intervention component--

(i) Identifies and selects eligible participants;

(ii) Diagnoses each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Develops a plan of program support to improve each participant's skills; and

(iv) Provides the services and activities listed in Sec. 693.11(a) that relate to the goals of the NEISP Program.

(g) *Public and private support.* (1) The Secretary reviews each State's plan for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program under this part.

(2) The Secretary looks for information that shows--

(i) the extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services under Sec. 693.11(b); and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(h) *Coordination with other early intervention activities.* (1) the Secretary reviews each State's plan for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State.

(2) The Secretary looks for information that shows--

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to used as either early intervention service providers under Sec. 693.11(b) or as support organizations for those service providers.

(i) *Evaluation report plan.* (1) The Secretary reviews each State's plan to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program.

(2) The Secretary looks for information that shows--

(i) The quality of the design of the component;

(ii) the extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable;

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(Authority: 20 U.S.C. 1070a-23)

(Approved by the Office of Management and Budget under control number 1840-0677)

Sec. 693.21 How does the Secretary allot funds to a State?

(a) If the amount appropriated for the program under this part for a fiscal year is $50,000,000 or more, the Secretary allots to each State that has submitted an approved plan under Sec. 693.10 and an approved application under Sec. 693.13, an amount that bears the same ratio to the total appropriation as the amount allocated to the LEAs in the State under 34 CFR part 200 bears to the total amount allocated to all LEAs in all States using the most recently available data.

(b) If the amount appropriated for the program under this part for a fiscal year is less than $50,000,000, the Secretary allots funds to each State in accordance with the provisions in Sec. 693.22.

(c) From the allotment calculated in this section, the Secretary disburses to a State an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will spend on its NEISP Program for a fiscal year as reported on its annual application under Sec. 693.13(a).

(d) A State may expend from its Federal allotment no more than one-half of the total amount of funds that State expends under its NEISP Program for that fiscal year.

(Authority: 20 U.S.C. 1070a-25)

Sec. 693.22 How does the Secretary allot funds to States on a competitive basis?

(a) The Secretary allots funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000.

(b) The Secretary conducts a grant competition for the States by means of a notice published in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in Secs. 693.10, 693.11, 693.12, and 693.13, and the selection criteria in this section.

(c)(1) The Secretary uses the selection criteria in paragraph (d) of this section to evaluate applications for grants under this program.

(2) The maximum score, not including prior grant recipient priority points in paragraph (d)(12) of this section, for all of these criteria is 140 points.

(3) The maximum score for each criterion is indicated in parentheses in paragraph (d) of this section.

(4) In the final selection of similarly rated applications, the Secretary considers the extent to which a State provides--

(i) A comprehensive State-wide early intervention and postsecondary educational scholarship program;

(ii) Eligible students with comprehensive long-term mentoring and advising; and

(iii) Eligible students with State grant funds for their postsecondary education as compared to the other States who apply for grant funds.

(d)(1) *Need for the program.* (20 points) The Secretary reviews each State's application for information that shows the need for the State-wide early intervention component and the methods for targeting its early intervention component activities on eligible students including consideration of--

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the three preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the three preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for--

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component; and

(vi) Describes the procedures the State will use to award postsecondary education scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(2) *Plan of operation.* (30 points) The Secretary reviews each State's application for information that shows the quality of the operating plan of the State-wide early intervention component, including--

(i) (3 points) The quality of the design of the component;

(ii) (3 points) An effective plan of management that ensures proper and efficient administration of the component;

(iii) (3 points) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) (3 points) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) (3 points) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by--

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) (7 points) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) (8 points) The extent to which other State grant funds are available to eligible NEISP students for their postsecondary education if the Federal scholarship component of the program is unfunded or reduced.

(3) *Quality of key personnel.* (10 points) (i) The Secretary reviews each State application for information that shows the qualifications of the key personnel the State plans to use to administer its State-wide early intervention component including--

(A) The qualifications of the director of the early intervention component;

(B) The qualifications of each of the other key personnel to be used in the component; and

(C) The amount of time each person referred to in paragraphs (d)(3)(i)(A) and (B) of this section will spend working in the activities under this component.

(ii) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(4) *Budget and cost effectiveness.* (5 points) The Secretary reviews each State's application for information that shows that the early intervention component has an adequate budget and is cost-effective including--

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(5) *Adequacy of resources.* (5 points) The Secretary reviews each State's application for information that shows that the State plans to devote adequate resources to its early intervention component including--

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(6) *Likelihood for success.* (20 points) The Secretary reviews each State application for information that shows the extent to which the State's early intervention component is likely to--

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions;

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education;

(iv) Identify and select eligible participants;

(v) Diagnose each participant's need for academic support in order to successfully pursue a program of postsecondary education; and

(vi) Develop a plan of program support to improve each participant's skills.

(7) *Public and private support.* (15 points) The Secretary reviews each State's application for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program including--

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services; and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(8) *Coordination with other early intervention activities.* (15 points) The Secretary reviews each State's application for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State including--

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers or as support organizations for those service providers.

(9) *Willingness to overmatch.* (10 points) The Secretary reviews each State's application to determine whether the State is willing to contribute more than one-half the cost of the program and the extent to which the State will overmatch its Federal allotment.

(10) *Evaluation report plan.* (10 points) The Secretary reviews each State's application to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program including--

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable; and

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(11) *Prior experience.* (20 points) In any award year subsequent to the 1994-95 award year, the initial year for which Federal funds were appropriated for this program, the Secretary gives priority to each State applicant that has conducted a NEISP Program within the fiscal year prior to the fiscal year for which the State applicant is applying in accordance with the following procedures:

(i) To determine the number of priority points to be awarded each eligible State applicant, the Secretary considers the State's prior experience of program participation in accordance with paragraphs (d)(11)(ii) and (iii) of this section.

(ii) The Secretary may add from one to twenty points to the point score obtained on the basis of the selection criteria, based on the State applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (d)(11)(iii) of this section.

(iii) The Secretary--based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, program evaluation reports, the previously funded application, the negotiated program plan or plans, pervious State matching funds, and the application under consideration--considers information that shows--

(A) (5 points) The extent to which the State's program has served the number of student participants it was funded to serve;

(B) (5 points) The extent to which the State's program has achieved the goals and objectives as stated in the previously funded application or negotiated program plan;

(C) (5 points) The extent to which the State has met the administrative requirements--including recordkeeping, reporting, and financial accountability--under the terms of the previously funded award; and

(D) (5 points) The extent to which the State has provided funds to match its Federal allotment.

(e) The Secretary disburses to each State selected in the competition conducted under paragraph (b) of this section an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under Sec. 693.13(a)(1).

(Authority: 20 U.S.C. 1070a-25)

(Approved by the Office of Management and Budget under control number 1840-0677)

Subpart D--How Does a Student Participate in the Early Intervention Component Under the NEISP Program?

Sec. 693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

The State agency administering the NEISP Program, as approved by the Secretary under Sec. 693.10(b)(1), shall select students in preschool through grade 12 to participate in the State's early intervention component, each of whom--

(a)(1) Is a citizen or a national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is, at the time of initial selection, a priority student, an at-risk student, a disadvantaged student, or a student with a limited proficiency in English;

(c) Has a need for academic support, as determined by the State, to pursue his or her education successfully;

(d) Resides within the State;

(e) Is not currently enrolled in a program of postsecondary education;

(f) Meets such other criteria as the State includes in its plan in order to meet the unique needs of the State and that are approved by the Secretary; and

(g) For an otherwise eligible student who is attending secondary school, is a student whom the State determines can reasonably be expected to meet the student eligibility requirements of 34 CFR 668.7 for Federal student financial assistance and such other requirements as necessary to qualify for State, local, or private student financial assistance at such time as the student enrolls in postsecondary education.

(Authority: 20 U.S.C. 1070a-23)

Subpart E--How Does a State Award a Scholarship to a Student?

Sec. 693.40 What are the requirements for a student to receive a scholarship under this program?

To be eligible for a scholarship under the scholarship component for this program, a student must--

(a) Apply for the scholarship by following the application procedures and deadlines established by the State agency approved by the Secretary under Sec. 693.10(b)(1) to administer the NEISP Program in the State in which the individual resides;

(b) Meet the relevant eligibility requirements contained in 34 CFR 668.7;

(c) Be less than 22 years old at the time his or her first scholarship is awarded;

(d) Have a high school diploma or a certificate of high school equivalence received on or after January 1, 1993;

(e) Be enrolled or accepted for enrollment in a program of instruction at an institution of higher education that is located within the State's boundaries, except that a State, at its option, may offer such a scholarship to a student who attends an eligible institution of higher education outside the State;

(f) If a State includes academic milestones in a student agreement under Sec. 693.11(a)(3) and requires the student to meet the milestones to be eligible for a scholarship, have met or exceeded the academic milestones to receive a scholarship; and

(g)(1) Have participated in the early intervention component of the program under this part;

(2) At the State's option, be a student whom the State documents as having successfully participated in a Federal Upward Bound Program funded under section 402C, chapter 1, subpart 2, part A of title IV of the HEA as determined by an administrator of the Federal Upward Bound program in which the student participated; or

(3) At the State's option, be a student whom the State determines as having successfully participated in an early intervention program comparable to the early intervention component of the program under this part.

(Authority: 20 U.S.C. 1070a-24)

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Subpart F--What Postaward Conditions Must be met by a State?

Sec. 693.50 What are allowable costs attributable to administration of the early intervention component?

A State may use its NEISP Program funds for the following allowable costs not specifically covered by 34 CFR parts 76 or 80 that are reasonably related to carrying out the early intervention component of the NEISP Program:

(a) In-service training of project staff.

(b) Transportation and meal costs for participants and staff for--

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" and "College Fair" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields and who can act as role models for early intervention participants.

(c) Purchasing testing materials.

(d) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of early intervention participants.

(e) Courses in English language instruction for participants with limited proficiency in English, if these classes are limited to early intervention component participants and if these classes are not otherwise available to those participants.

(f) For participants in an early intervention residential summer activity, room and board--computed on a weekly basis--not to exceed the weekly rate a host institution charges regularly enrolled students at the institution.

(g) Room and board for those people responsible for dormitory supervision of early intervention component participants during a residential summer activity.

(h) Transportation costs of early intervention component participants for regularly scheduled component activities.

(i) Transportation, meals, and overnight accommodations for staff members if they are required to accompany participants in program activities such as field trips.

(j) Costs of remedial and special classes if--

(1) These classes are limited to early intervention component participants; and

(2) Identical instruction is not readily available through another Federal program or a State, local, or privately funded program.

(Authority: 20 U.S.C. 1070a-22)

Sec. 693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

A State may not use its NEISP Program funds for costs incurred for the early intervention component of the NEISP Program such as--

(a) Duplication of services that are available to participants through--

(1) State, local, or private sources not included in the State plan under Sec. 693.11; or

(2) Other Federal programs, such as projects under the Federal TRIO programs;

(b) Research not directly related to the evaluation or improvement of the program;

(c) Purchase of any equipment, unless the State demonstrates to the Secretary's satisfaction that purchase is less expensive than renting or leasing;

(d) Meals for program staff except as provided in Sec. 693.50.

(e) Clothing;

(f) Construction, renovation, or remodeling of any facilities; or

(g) Tuition, stipends, or any other form of student financial support for program staff.

(Authority: 20 U.S.C. 1070a-22)

Sec. 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

(a) Each State receiving an allotment under this part shall prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The report must summarize and evaluate a State's activities under the program and the performance of the student participants. Each State's evaluation report design must include measures that permit the State to track all participating students progress throughout each student's participation in the program.

(b) The biennial evaluation report of the early intervention component of the program must include, but is not limited to--

(1) Quantifiable information on the extent to which the State's program is fulfilling the program objectives;

(2) The effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary education enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education;

(3) The barriers of the effectiveness of the program and recommendations for changes or improvements to the program;

(4) The cost-effectiveness of the program;

(5) The extent to which the student recipients comply with the requirements of the program;

(6) Key program information listed on an annual and biennial basis;

(7) Other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and

(8) Any other information required by the Secretary in order to carry out the evaluation report function.

(Authority: 20 U.S.C. 1070a-26)

(Approved by the Office of Management and Budget under control number 1840-0677)

Appendix A--List of Final Regulations Published in 1997

FEDERAL REGISTER DATE	PART	PURPOSE
May 9, 1997	685	Corrects an omission in the June 19, 1996 final regulations (61 FR 31358).
June 3, 1997	685	Amends Sec. 685.212(c) of the Direct Loan regulations to correct a technical error.
July 1, 1997	685	Revises income percentage factors for the income contingent repayment plan for Direct Loan Program; updates sample income contingent repayment amounts for single and married or head-of-household borrowers at various income and debt levels.
September 26, 1997	674, 675, and 676	Provides consistency among program regulations; corrects minor technical errors and omissions in the existing regulations; conforms with self-implementing provisions of the Higher Education Act of 1965, as amended (HEA).
November 25, 1997	668	Revises Subparts B and K and adds a new Subpart L to improve the Secretary's oversight of participating institutions by revising the standards of financial responsibility to provide a more accurate and comprehensive measure of an institution's financial condition.
November 28, 1997 (62 FR 63428)	682 and 685	Amends Federal Family Education Loan (FFEL) and Direct Loan regulations to eliminate certain differences in the requirements of the FFEL and Direct Loan programs and reduce burden.
November 28, 1997 (62 FR 63438)	675	Amends Federal Work-Study (FWS) regulations in response to the President's "America Reads Challenge" by providing for an additional waiver of the FWS institutional-share requirement for tutors in a family literacy program that provides services to families with preschool age children or children who are in elementary school.

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Appendix B--Summary of Changes in Final Regulations Published in 1997

Section	Effective	Change
Part 668		
668.13	7/1/98	Amends section to harmonize with new Subpart L by removing paragraphs d and e.
668.23	7/1/98	Amends section to harmonize with new Subpart L by removing paragraph f.
668.162	7/1/98	Amends section to harmonize with new Subpart L by adding cash monitoring payment as a method under which the Secretary may provide funds to an institution.
668.167	7/1/98	Amends section to harmonize with new Subpart L by adding requirements for requesting FFEL Program funds for a school placed under the cash monitoring payment method.
668.171	7/1/98	Adds section under new Subpart L that carries forward current standards and provisions relating to an institution's financial obligations and establishes a ratio methodology under which an institution must satisfy the composite score standard.
668.172	7/1/98	Adds section under new Subpart L that establishes financial ratios used to calculate the composite score for proprietary institutions and for private non-profit institutions.
668.173	7/1/98	Adds section under new Subpart L that establishes the cash reserve standards required to make refunds under Sec. 668.22.
668.174	7/1/98	Adds section under new Subpart L that carries forward current standards and provisions relating to an institution's administration of Title IV, HEA programs as a measure of determining whether the institution is financially responsible.
668.175	7/1/98	Adds section under new Subpart L that establishes alternative standards and requirements for an institution that is determined to be not financially responsible under 668.171.

Appendix B--Summary of Changes in Final Regulations Published in 1997

Section	Effective	Change
Part 668 (continued)		
Appendix F	7/1/98	Adds appendix that gives ratio methodology for proprietary institutions.
Appendix G	7/1/98	Adds appendix that gives ratio methodology for private non-profit institutions.
Part 674		
674.6	10/27/97	Eliminates the option of implementing a FFEL default reduction plan to the Federal Perkins Loan Program.
674.9	10/27/97	Corrects incorrect cross-reference in paragraph (a).
674.19	10/27/97	Corrects incorrect cross-reference in paragraph (b).
674.31	10/27/97	Corrects inadvertent omission by excluding periods of forbearance in determining the 10-year repayment period for a Federal Perkins Loan.
674.33	10/27/97	Corrects inadvertent omission by adding $30 minimum monthly payment rate for Direct loans.
674.34	10/27/97	Clarifies that an institution may not include the period of the post-deferment grace period in determining the 10-year repayment period for a Federal Perkins Loan.
674.35	10/27/97	Corrects inadvertent omission by adding hardship deferment to list of qualifying deferment periods that are not to be included in the 10-year repayment period for a Federal Perkins Loan.
674.36	10/27/97	Corrects inadvertent omission by adding hardship deferment to list of qualifying deferment periods that are not to be included in the 10-year repayment period for a Federal Perkins Loan.
674.37	10/27/97	Corrects inadvertent omission by adding hardship deferment to list of qualifying deferment periods that are not to be included in the 10-year repayment period for a Federal Perkins Loan.

Appendix B--Summary of Changes in Final Regulations Published in 1997

Section	Effective	Change
Part 674 (continued)		
674.45	10/27/97	Eliminates the phrase "unless specifically prohibited by State law," in order to make this paragraph consistent with section 484A of the HEA and with Sec. 674.45(g).
674.52	10/27/97	Corrects inadvertent omission by adding Sec. 674.58 to the cross-references.
Part 675		
675.9	10/27/97	Corrects incorrect cross-reference in paragraph (a).
675.19	10/27/97	Corrects incorrect cross-reference in paragraph (a).
675.20	10/27/97	Adds the word "public" to "local agency" and deletes reference to appendix B for a sample agreement.
675.22	10/27/97	Adds the word "public" to "local agency" in the section heading.
675.26	7/1/98	Provides for an additional waiver of the FWS institutional-share requirement for tutors in a family literacy program that provides services to families with preschool age children or children who are in elementary school.
675.27	10/27/97	Corrects typographical error in the authority citation following the section.
Part 676		
676.9	10/27/97	Corrects incorrect cross-reference in paragraph (a).
676.19	10/27/97	Corrects incorrect cross-reference in paragraph (a).
Part 682		
682.201	7/1/98	Changes "SLS loan" references to "unsubsidized Stafford loan."

Appendix B--Summary of Changes in Final Regulations Published in 1997

Section	Effective	Change
Part 682 (continued)		
682.202	7/1/98	Provides for the refund of the applicable portion of the origination fee that is attributable to that portion of loan funds that are returned by the school.
682.209	7/1/98	Provides that a lender treat refund of tuition or other institutional charges received from a school consistent with the requirements of Secs. 682.202 and 682.401.
682.401	7/1/98	Provides for the refund of the applicable portion of the insurance premium that is attributable to that portion of loan funds that are returned by the school.
682.402	7/1/98	Clarifies requirements for discharge of a Federal Consolidation Loan for total and permanent disability.
682.604	7/1/98	Revises exit counseling requirements to allow a school to base the calculation of a student's "average anticipated monthly repayments" upon either the student's individual indebtedness or upon the average indebtedness of students who have obtained loans for attendance at that school or in the borrower's program of study.
Part 685		
685.202	7/1/98	Provides for the refund of the applicable portion of the loan fee that is attributable to that portion of loan funds that are returned by the school.
685.208	7/1/96	Restores inadvertently omitted text of paragraphs (i) and (ii) from Sec. 685.208(f)(2)--income contingent repayment plan.
685.212	6/3/97	Corrects technical error by requiring an endorser of a Direct PLUS Loan or a Direct PLUS Consolidation Loan to be obligated to repay that loan when the borrower's obligation to repay is discharged in bankruptcy.
685.212	7/1/98	Provides for the discharge of a borrower's or endorser's obligation to repay a Direct Consolidation Loan for a borrower who became totally and permanently disabled (or whose condition substantially deteriorated, so as to render the borrower totally and permanently disabled) after applying for all of the Consolidation Loan's underlying loans.

Appendix B--Summary of Changes in Final Regulations Published in 1997

Section	Effective	Change
Part 685 (continued)		
685.301	7/1/98	Establishes a provision that would allow, but not require, a school to choose not to originate a Direct Subsidized Loan for a student with a calculated need of $200 or less.
685.304	7/1/98	Revises exit counseling requirements to allow a school to base the calculation of a student's "average anticipated monthly repayments" upon either the student's individual indebtedness or upon the average indebtedness of students who have obtained loans for attendance at that school or in the borrower's program of study.
Appendix A	7/1/97	Revises income percentage factors for the income contingent repayment plan and updates sample income contingent repayment amounts for single and married or head-of-household borrowers at various income and debt levels.

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